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'THERE MET ME A HORSEMAN, WHO . . . RODE STRAIGHT  
AT ME.'" (p. 30).

# NOTABLE TRIALS

## ROMANCES OF THE LAW COURTS

BY

R. STORRY DEANS

of Gray's Inn, Barrister-at-Law

*Author of "The Student's Legal History,"  
"The Law of Parent and Child," etc.*

*Sometime holder of the Studentship of the  
Four Inns of Court; Arden Scholar of  
Gray's Inn, etc.*

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## PREFACE.

BE assured, gentle reader, that if the stories related in this volume be not interesting, it is not the fault of the stories, but only of the narrator. For there is nothing to surpass, in human interest, the records of the Law Courts. Many a writer of fiction has founded his romances on those records; and many another has spent much ingenuity in inventing plot and incident not half so weird or so striking as hundreds to be found in the pages of the "State Trials," the brief reports of the "Annual Register," or the columns of the *Times*. For myself, having no pretensions to write with the pen of a Scott or a Stevenson, I have been content to set out as plainly and as lucidly as I might some score of true tales. And if the reading thereof give not to you the pleasure that I hope for, at any rate I have the satisfaction of knowing that the writing of them has pleasantly beguiled more than one tedious vacation, and many a long winter night.

After all, can any stories be more enthralling than

true tales of love and jealousy, passion and revenge, imposture and intrigue? Did Dickens himself ever invent a character more cruel than Pritchard, or more callous than Palmer? Did Milady of "The Three Musketeers" ever plan a revenge more horrible than the vengeance actually executed on Overbury by the frail Countess who loved the gallant Rochester? Is there, in all fiction, any story of imposture equal to that of Orton, the butcher's son, who cozened half England into the belief that he was the rightful heir of one of her most ancient families? Did Wilkie Collins ever conjure out of the recesses of his ingenious brain a plot of intrigue more bewildering than the Douglas Cause? Could any novelist, think you, tell a tale like unto that of the Perrys without being accused of trespassing upon the realms of the incredible? And I believe that the tales of Sherlock Holmes himself contain no more startling narrative of the detection of guilt than the story of the conviction of Courvoisier.

There will be found here some traces of ancient manners, customs, usages, and superstitions; and the student of the history of progress will be able to discover somewhat of interest to him. What a difference, for example, between the trial of Overbury's murderers and the trial of Palmer or of Madeleine Smith! What a

state of Society revealed at the trial of Mrs. Turner and the trials of Lord Mohun! Those who rail at the Smart Set of the twentieth century may see, on looking back, that at any rate it is impossible now for a peer of the realm and a captain in the army to way-lay, in the middle of London, and almost succeed in abducting a popular actress; that vice dare not now openly flaunt itself in high places as once it was wont to do.

To me, the most interesting fact in the study of ancient and modern trials is the progress it reveals in the administration of justice. To-day we are justly proud of British justice. Once there was little to boast about. Writers commonly assume that oppression on the judgment seat ceased with the enactment of the law which made judges no longer removable at the pleasure of the Government, but gave them security of tenure. I do not share that opinion. I believe that we owe the improvement in the quality of our justice to the Press. Harshness and oppression flourish most in the dark. It is difficult, if not impossible, for a judge to be deliberately unjust when he knows that the next morning the whole country will know of it. Publicity is the enemy of tyranny, all the world over. And our modern judges, walking in the full glare of public

scrutiny, have become so scrupulously just, that I believe there never existed in the world's history a body of men of such single-minded integrity as the judges of the last half-century. Jeffreys, Scroggs, even Coke, have vanished, and we need never fear their re-incarnation.

All these things, gentle reader, you may find here. And, having found them, may be thankful that you live in a new age that is ever tending, and must ever tend, to yet higher progress.

R. STORRY DEANS.

GARDEN COURT,

*September 30, 1906*

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# NOTABLE TRIALS.

## I.

### WAS IT SUICIDE ?

#### *The Trial of Madeleine Smith.*

IN the year 1857, on the 30th of June, there stepped into the dock at the High Court of Justiciary, Edinburgh, a figure such as is not often seen in the dock of a criminal court. A beautiful girl, in the bloom of young-womanhood—not the beauty of the courtesan, but the beauty of the refined middle-class girl reared amid comfortable surroundings and with cultivated tastes—such was Madeleine Smith, who stood charged with murder. Contemporary writers describe her in terms of rapture: her dazzlingly fair complexion, her bright eyes, her face of the perfect oval shape, her high, white forehead, and, above all, the grace of her carriage. I have spoken with those who saw her in later life—when, broken in spirit, and living a life of obscurity under an assumed name, she strove to forget those terrible days in 1857—and all agree that even in middle life and old age she was charming.

The woman who stands in the felon's dock is generally ragged, dirty, or tawdry in her dress. This one was habited so as to heighten the effect of her beauty and refined appearance. A dress of brown silk of modish

cut, a black silk cloak, a white straw bonnet with white ribbons, lavender kid gloves—together, Madeleine Smith looked little like one charged with a crime.

And such a crime! For this young girl was charged with the worst crime known to the law—murder by poison. And the victim of the alleged poisoning was a young man, a lover, or former lover.

For weeks before the trial Scotland had been ringing with the story, and not only Scotland but England also. Everybody was a pro-Madeleine-Smithite or an anti-Madeleine Smithite. On the whole, Glasgow was in favour of the prisoner. The big-hearted, long-pursed merchants of that city had taken the girl under their protection. Her father, a fellow-citizen, was not ill off. He was an architect in a fair way of practice. But the Glasgow merchants resolved not merely that Madeleine should be defended, but that she should have the best skill to be had for money. A subscription was opened on 'Change, and so much money was raised that there was over twice as much as could be spent. What was spent was well spent; for never was accused more brilliantly defended. Inglis, the Dean of Faculty, most eloquent of advocates, most searching of reasoners (he afterwards, as judge, tried Pritchard); Young (afterwards Lord Young), a man of the most penetrating intellect; and Moncrieff, whose brilliant career was cut untimely short—these formed a trio of defenders able to appeal at will to the emotions or to the reason; to break down a false witness; to detect an exaggeration and to expose it; to urge a doubt; to push home an advantage. Inglis, in particular, was the brightest ornament of the Scots Bar under Queen Victoria.

Against this stalwart trio were arrayed Moncrieff (Lord-Advocate), Maitland (Solicitor-General), and

Donald Mackenzie (the latter afterwards celebrated as Lord Mackenzie). So that the very pick and flower of the advocacy of Scotland was engaged in this tremendous struggle. For it was a tremendous struggle. Every trial for murder is. No one who has not experienced it can understand the strain it is on an advocate who finds himself engaged in a contest where a human life is at stake.

Three judges sat—Lord Hope (Lord Justice-Clerk), Lord Ivory, and Lord Handyside.\* Of these, Hope, the president, had been a friend of Sir Walter Scott, who had predicted a brilliant career for him. They were to hear a most romantic story.

Madeleine Smith was, as I have indicated, the daughter of a well-to-do architect, James Smith, of Glasgow. In the summer the Smiths lived at the coast, at Row, on the Gareloch (Clyde); and in the winter in Glasgow—at first in India Street, afterwards at No. 7, Blytheswood Square, a house which is still standing, and is occupied by an insurance company. She early manifested a tendency to music and art. At the age of fourteen she was sent to a "genteel boarding-school" at Clapton, where she remained for three years. She left school, then, at the age of seventeen, a bright, lively, impulsive girl, with a head more than usually full of the romantic notions of adolescent girlhood.

Two years later, in the spring of 1855, being nineteen years old at the time, Madeleine Smith was introduced, in the most casual way, apparently, to M. Pierre Emile L'Angelier. She was, probably, somewhat surprised when she shook hands with her new

\* The English reader should remember that judges, who in England are called "Mr. Justice," are in Scotland always Lords. They are called "Lords of Session," to distinguish them from Lords of Parliament.

acquaintance, to find that he had left deposited in her hand a tiny note. From this epistle it appeared that L'Angelier had long worshipped the budding beauty from afar; that he tried in vain to gain an introduction to her, but had failed by reason of the social difference between them; and that at last he had persuaded a fellow-clerk, Baird by name, to effect an introduction in the street. Baird was of the mature age of seventeen, and was, doubtless, little troubled by questions either of etiquette or of propriety.

Finally, the note begged and prayed the fair Madeleine to grant the writer thereof an interview. He would be in Sauchiehall Street on such a day at such an hour. Might he venture to hope that she would see him and learn from him how much he loved her?

The secrecy, the romance of all this, appealed to the young girl. It was far from a humdrum way of making love. And the name! L'Angelier! In itself it suggested romantic developments. At any rate, and for whatever reason or no reason, Madeleine Smith did clandestinely meet L'Angelier. What is more, she continued to meet him clandestinely for several months; and it is apparent that she developed for him a passion of the most burning kind. How or why she was fascinated by the man can never be told. He was not particularly handsome, nor was he clever, nor was he of bold carriage. His men acquaintances thought him a very ordinary Frenchman. In fact, he was Jersey born, of French extraction, and very humble parentage, and was, in 1855, a clerk at ten shillings a week. One remarkable thing about him was his vanity. Many men, especially many Frenchmen, think themselves irresistible. Pierre Emile L'Angelier looked upon himself as a sort of Napoleon in female conquest. It may have

been this very impudent self-assurance that captivated the unformed mind and ill-balanced imagination of Madeleine Smith. To complete the sketch of the man, it may be said that he had, apparently, made up his mind to push his fortunes by marriage. There was evidence that he had twice been engaged, or nearly so, to ladies of a class and position superior to his own—one an Englishwoman, and the other a lady of Fife.

When the Smiths left Glasgow for Row, we find Madeleine and her lover in correspondence. She was already (April, 1855) signing herself "with kind love, yours very sincerely, Madeleine." Ere long, Mr. Smith heard of his daughter having been seen walking in Glasgow with a strange man, and was very much annoyed. He spoke to his daughter; but she persuaded him there was nothing in it, and continued to correspond surreptitiously with L'Angelier. In June, or July (1855), however, Mr. and Mrs. Smith discovered the true state of affairs. They pointed out to their daughter the disparity between L'Angelier's social position and her own, and forbade further intercourse. But the Frenchman did not accept the rebuff quietly. He wrote letters reproaching the girl with coldness and bad faith, and accusing her of playing with his affections; she could not, he said, have told her father that she had actually promised to marry him. He protested his love, and vowed everlasting faith. For a time, however, all relations were broken off.

Miss Smith had been introduced by L'Angelier to a friend of his, one of those women who delight in "romances," and never think of prudence; and this friend it was who contrived to bring the lovers together again. No doubt the good lady, who was old enough to know better, thought she was doing her new



friend a great service in assisting her to defy the parental prohibition. At any rate, the lovers met. He was ardent. She was nothing loth. And ere long the stolen meetings became more frequent; the clandestine letters more impassioned.

Rarely, I should imagine, has a young girl addressed a man as Madeleine Smith addressed this low-caste fellow. "Adieu, my sweetest, dearest Emile. . . . Believe me, beloved of my soul. . . ." She was no longer "Yours sincerely, Madeleine"; but "Your devoted Mimi."

Better, far better, had it been if Mr. Smith had waived social and pecuniary questions, and had invited L'Angelier to his house. The stolen interviews began to take place at night, by the aid of a servant, Christina Haggart, who let L'Angelier into her master's house secretly, and kept watch while the lovers were alone together. The first week in December, 1855, the unhappy girl was writing to L'Angelier in all the delirium of passion:—"My own darling husband . . . I did not expect the pleasure of seeing you last evening and of being fondled by you, dear, dear Emile. . . . Never fear, I love you well, my own sweet, darling Emile"; and so on, page after page of the most unrestrained passion. And she concludes in a long, wild, rapturous flight: "Much love, kisses, tender, long embraces, kisses, love. I am thy own, thy ever fond, thy own dear loving wife, thy MIMI L'ANGELIER."

To do the infatuated pair justice, the letters show that they both contemplated marriage at an early date—an elopement was planned for the spring of 1856. Meanwhile, this girl of nineteen was pouring on her betrayer a very torrent of passion. He used to visit her whenever he could find her alone, making known his presence

by tapping at her window with his stick. She, as her letters show, became more and more enamoured. He, on his part, was jealously suspicious. If he saw her out walking with any man whatever, he called for an explanation; and, what is more surprising, she gave one in all humility, and apologised humbly for hurting her beloved Emile's feelings.

When the Smiths removed from India Street to Blytheswood Square, the meetings became more frequent. The house was situate at the corner of Main Street, and the Smiths occupied two flats—one on the ground floor, and a half-basement. A room in the half-basement, looking out on Main Street, was Madeleine's bedchamber, which she shared with her little sister, Janet. Madeleine used to write, giving times when letters might be dropped in the area, *e.g.* "I shall expect a letter Thursday, eight o'clock or ten o'clock"; and L'Angelier would walk along Main Street, stoop, as if lacing up his shoes, and drop his letter, which Madeleine could easily reach by opening her window. Mr. Smith seems to have been out of town frequently, and on these occasions little Janet generally slept with her mother. A note to L'Angelier, and the Frenchman would be introduced to the room by Christina Haggart. Sunday morning, when the rest of the family were at church, was also a time for meetings. And occasionally there would be few minutes' conversation at the window.

So the ill-omened intercourse went on until February, 1857. For a little while before this there had been tiffs; and, apparently, the young girl was annoyed at the domineering tone of her lover. Possibly, also, she had discovered that he was a cad. At any rate, on a certain day in that month, he returned her one of her letters, and she seized the opportunity to write a short,

angry letter, telling him that all was over between them, and that he was to return her letters and likeness on such a night at the area gate. "I trust to your honour as a gentleman that you will not reveal anything that has passed between us."

The poor creature was soon to find what a broken reed was the honour on which she relied. L'Angelier never kept the appointment at the area gate. A second note was written to him. This time he replied. But the answer struck terror to the heart of Madeleine Smith. For he not only refused, decisively, to give up the letters, but threatened to write to her father and show him those guilty evidences.

It is from this time that the plot thickens.

About this time Madeleine had made up her mind to accept as her husband a gentleman who was a splendid specimen of a Glasgow merchant. Her parents were overjoyed at the choice. And it is clear that one reason why she asked for her letters back was that this gentleman had proposed marriage on the 28th of January; and she had given him reason to believe that she would accept him.

L'Angelier's refusal was bad enough. His black-mailing threat drove the poor girl nearly frantic. She wrote him (February 10th) a letter that would have melted the heart of any man, however angry, had he not been a corrupt and hardened scoundrel. She implored him to spare her—"do not bring down my father's wrath on me. It will kill my mother. . . . Oh! will you not keep my secret from the world? Oh! you will not, for Christ's sake, denounce me. I shall be undone. I shall be ruined. Who would trust me? Shame would be my lot. Despise me, hate me, but make me not the public scandal. . . . Emile, will

you not grant me this, my last favour?" So for page after page—entreaty, appeals to his remembrance of their former love, to his pity for her and her innocent mother. And, withal, not a single word of complaint, of reproach. Had she written, "Sir, if you do not bring my letters to-night I will stab you to the heart to-morrow," the blackmailer would probably have come to heel.

As it was, he held to his position—she should continue with him as before, or exposure should follow. The victim of his arts could do nothing but comply. A stolen meeting or two; a few more letters, not quite so burning or so outspoken as the old ones, but, still, the letters of a lover. On the 6th of March the Smiths went to Bridge of Allan. Maleleine's new lover followed, and the marriage was arranged definitely for June. On the 17th of March the Smiths returned to Glasgow. Meanwhile, L'Angelier had evidently heard of the engagement; for we find "Mimi" writing: "Believe nothing till I tell you, sweet one of my heart."

Early in March, L'Angelier was out of sorts. Madeleine suggested to him to try the Isle of Wight; but he said he could not bear the journey. We find him at Bridge of Allan on March 19th, apparently in good health and spirits, and anxiously inquiring for letters. Madeleine Smith, meanwhile, had written to his Glasgow lodgings making an appointment for the 17th or 18th. This, of course, he received too late. On the Sunday, March 22nd, another letter reached him, inquiring:—

"Why, my beloved, did you not come to me? Oh, beloved, are you ill? Come to me, sweet one. I waited and waited for you, but you came not. I shall wait again *to-morrow night*, same hour and arrangement. Do come, sweet love, my own dear love of a sweetheart. Come, beloved, and clasp me to your heart,

Come, and we shall be happy. A kiss, fond love. Adieu, with tender embraces. Ever believe me to be your own ever dear fond  
"MIMI."

The postmark on the envelope was "Glasgow, March 21." It may be said here and now that the prosecution contended that this was an appointment for Sunday (22nd). The defence said, No, this was written on Friday night, and was an appointment for Saturday (21st).

However that may have been, the letter caused L'Angelier to leave Bridge of Allan on the Sunday afternoon. He walked to Stirling, took train to Coatbridge, and thence walked to Glasgow. Here he arrived early in the evening, and, after having had some tea, set out about 9.20, and was seen sauntering in the direction of Blytheswood Square. At 9.30 he called on a friend (M'Alester) in Terrace Street; but M'Alester was not at home. The next time he was seen or heard of by any of the witnesses was at two o'clock on Monday morning. His landlady was startled by a violent ringing of the bell. She went down, and found her lodger standing, apparently in great pain. "I am going to have another attack of that vomiting," he said. "I am very bad." The good woman assisted him to his room, and sent for a doctor, Dr. Steven. This gentleman did not come, but sent word to use a mustard-plaster and laudanum (of which L'Angelier had a bottle). At seven o'clock, the patient was dreadfully ill, and in pain. Steven came, on being sent for; and, after prescribing morphia, left. Rest and quiet, he said, would effect a cure. Then L'Angelier said, "*I know better, I am far worse than the doctor thinks.*" Two hours later he asked to see Miss Perry; but before that lady could arrive, he was dead. He went off, apparently, in a quiet sleep.

On the 26th of March, L'Angelier was buried. A certain M. de Mean, of the French Consulate in Glasgow, knew both L'Angelier and Mr. Smith. He knew that the deceased had letters of Madeleine's in his possession, and he went to Mr. Smith, told him of the fact, and suggested that these letters should be obtained somehow. This brought de Mean into contact with L'Angelier's employers, who had taken possession of their employé's belongings; and they refused to give up anything. In fact, they had suspicions of foul play, and had caused a *post-mortem* examination to be made of the body.

On the 26th of March, Madeleine Smith knew that her letters would not be given up to her, and that they were in the hands of strangers. She feared, apparently, that her father would soon know how extremely compromising they were; and, in a moment of despair, she left her home in Glasgow secretly, and took boat for the country house at Row. Her flight was discovered before many hours, and her *fiancé* was despatched to bring her back. By taking train to Greenock, he was able to arrive at that port before the boat was due, and thus, when the vessel touched at Greenock Pier, Madeleine Smith found herself confronted by her betrothed. A tearful scene ensued. She protested that she was unable to meet her parents. She dreaded the wrath of her father. But her *fiancé*, on promising that she should not be treated with severity, persuaded her to return with him.

Events now developed rapidly. The Procurator-Fiscal ordered L'Angelier's body to be exhumed. Inquiries were made amongst the chemists in Glasgow. The letters were handed over and perused by the authorities.

And on the 31st of March, Madeleine Smith was arrested on the charge of wilful murder.

Up to that time she had wept incessantly ; but from the moment of her arrest her demeanour changed. She met the charge with a haughty denial. She faced the Sheriff with calm fortitude. She declared herself absolutely innocent, and asserted that she had not seen the murdered man for three weeks prior to his death. While admitting that she had purchased arsenic—the poison found by the analysts in the body—she said she had bought it for use as a cosmetic. Pressed with the fact that she had, when she bought the arsenic, stated to the chemists that she wanted it to kill rats, she replied that she had done this because she did not want them to know that she required it to improve her complexion.

Thus, at the trial in Edinburgh, the case stood thus : The prosecution alleged and proved (1) that the prisoner had bought arsenic on three occasions, namely, the 21st of February, and the 6th and 18th of March ; (2) that L'Angelier had come back to Glasgow on the fatal Sunday night in order to see her ; (3) that he had had three attacks of the same nature, the first in February about a fortnight before the 22nd, the second on the 22nd of February, and the third, the fatal attack ; (4) that on the 22nd of February, Madeleine Smith had handed him a cup of cocoa out of her bedroom window ; (5) that the deceased undoubtedly died of arsenical poisoning. They further alleged as matters of inference from the facts proved (6) that the accused bought the poison for the purpose of administering it to the deceased ; that she did administer it on the three occasions named ; (7) that her motive for murder was that he was blackmailing her when she desired to be free of him ; and (8) that he did meet her on the fatal Sunday night.

To this the defence made answer: (1) That the purchases of arsenic were all innocent, having been made by the accused for toilet purposes as the result of reading articles in various journals and magazines on the arsenic-eating Styrian peasants, and also as the result of a former conversation with an old schoolfellow named Guibelei, who had recommended it as a cosmetic; (2) that whatever reason brought L'Angelier back to Glasgow on the Sunday, in fact he did not see the accused; and that there was no evidence of her seeing him then; (3) that the first attack took place at a time before the 21st of February, which was the earliest date on which Miss Smith was proved to have purchased arsenic; (4) that the purchases of arsenic were quite open, being made at the shops where the prisoner was known, and signed for by her; (5) that it was not proved the cocoa was poisoned; (6) that no other instance was proved of the prisoner giving food or drink to the deceased; (7) that proof of motive was nothing unless followed by proof of a guilty act; but that, in fact, to kill L'Angelier would have been the very way to cause the letters to fall into the hands of third parties, which the accused was obviously anxious to prevent; and (8) that there was no proof whatever of a meeting on the Sunday; and, in a highly penal case, the inference asked to be drawn was too great a one.

The trial was conducted with conspicuous fairness. The medical witnesses for the Crown stated that the amount of poison found in the body was enormous—enough to kill many people; and Inglis pressed them to infer from that fact that L'Angelier had committed suicide. "Is it not," he asked, "the suicide who uses double-shotted pistol and large doses?" But, in the end, the defence turned on the point, "What evidence was



there that Madeleine Smith saw L'Angelier on the Sunday night?" And the answer was, "None." The prosecution admitted that it was matter of inference, merely—a man comes to a place to see a particular person; he goes out with the avowed object of seeing that person; he goes and returns under circumstances similar to those which obtained on occasions when he had seen that person. As the Lord Justice-Clerk pointed out, in a mercantile transaction the fact would be sufficient to warrant the inference that an interview took place. But this was not a mercantile transaction. It was life and death.

On the other hand, there was some evidence, on this momentous point, in the prisoner's favour. Her sister Janet slept with her that night. She swore (she was about fourteen years old) that Madeleine undressed and came to bed at ten o'clock, and was still in bed, and asleep, at eight on Monday morning. Christina Haggart swore that she held the key of the area, and that she let no one in or out on the Sunday night. The policeman on the beat, who had often seen L'Angelier before, did not see him in Mains Street or Blytheswood Square on the Sunday night; and he must, he said, have seen him had he been there.

But in his oration to the jury Inglis did not so much rely on this positive testimony. He relied on the improbability of such a crime being committed by a young girl; and, above all, on the entire failure of the Crown to trace L'Angelier to 7, Blytheswood Square, between 9.30 p.m. on Sunday and 2.30 a.m. on Monday. The motive point he tore to shreds and tatters. With fine scorn, he asked whether, if anybody died, those who benefited by his death were to be suspected of his murder. Was it to be said that an eldest son always had a motive to murder his father, that he might succeed to

his estate? Had a junior officer in the army a "motive" to murder all his seniors, that he might attain promotion the quicker?

Never was there a more magnificent speech made in defence of any prisoner. In eloquence it rivalled Thomas Erskine's best orations. In analysis it was equal to Cockburn's speech in Palmer's case. And particularly did the eloquent advocate pour out the vials of his contempt on L'Angelier.

The summing-up of Lord Hope, too, was worthy of the occasion. It lasted the best part of a day. In it, he leaned in favour of the prosecution on the motive question. But when it came to the other part of the story he told the jury to be very cautious in drawing an inference in such a case as this. They could not, he told them, get rid of the fact that nobody had seen L'Angelier and the prisoner together, or knew of the man being at No. 7, Blytheswood Square, on the Sunday night.

The result was anxiously expected; and, when it came, was no surprise. The jury, by a majority, found the charges of poisoning "Not Proven."

Madeleine Smith was acquitted. But I cannot help thinking that it might have been better had the jury been obliged to say "Not Guilty." "Not Proven" is a cautious verdict, whose very caution commends it to the canny North Briton. But a prisoner whose guilt is not proved ought, in my opinion, to have a clean verdict; because everyone is entitled to be held innocent until proved to be guilty.

No further light has ever been shed on this mysterious occurrence. Was it suicide? It was proved that L'Angelier, on the occasion when he had been jilted by the Fifeshire lady, had talked of self-

destruction. Vain people—and he was vain—are likely subjects for suicide. And was there anything concealed behind his words to the landlady, “I know better. I am worse than the doctor thinks”?

Or will there be, some day, further light on the mystery? I doubt it. If, however, it should at some future time be discovered how Pierre Emile L’Angelier met his death, the discovery would clear up one of the greatest mysteries in the annals of British justice.

## II.

### A DOUBLE MYSTERY.

#### *The Case of Joan Perry and her Sons.*

IT was in the year 1660, when England had scarcely recovered from the paroxysm of the Restoration: when the Great Protector had just ceased to dominate the councils of the world: that the county of Gloucester saw one of the most remarkable judicial tragedies of which our annals tell.

One of the great territorial families of Gloucestershire was the Campdens; and the representative of that house at Campden was the Lady Viscountess Campden, who owned the greater part of the country round. My Lady employed as her steward Mr. William Harrison, an old and faithful servant who had spent nearly fifty of his seventy years in the service of the Campdens. Amongst Harrison's other duties was that of collecting the tenants' rents.

On the 16th of August, 1660, the old steward had to go to gather in the money owing by some tenants at Charingworth—a place distant from his house about two miles; and Mr. Harrison determined to proceed on foot. Accordingly, he set out in the morning. At six o'clock in the evening he had not returned. Mrs. Harrison became impatient. Seven o'clock struck; then eight. Mrs. Harrison became uneasy. Her husband was a man of regular habits, and it was not his wont to stay out so late.

In those days there were no police. Roads were dark, and highway robbers not unknown. And Mrs. Harrison might well be fearful for an old man travelling alone on a lonesome road, and carrying a large sum of money. At last her uneasiness became so great that she summoned a servant—a man of the name of John Perry—and requested him to take the road to Charingworth, to meet his master, and to escort him home. Perry put on his hat and hastened forth. But Mrs. Harrison's alarm turned to absolute consternation as the night hours waxed and waned, and neither master nor man appeared. She seems to have made up her mind, in the end, that her husband had been detained to a late hour at Charingworth; and that then, not caring to carry so much money home at so late an hour, he had lodged at an inn or a farmhouse. Still, the faithful wife could not but feel uneasy when morning dawned and neither her husband nor John Perry appeared. So at an early hour on the morning of the 17th, she sent her son, Edward, to meet his father.

Edward Harrison set off on the Charingworth road, and very soon met John Perry, who declared that his master was not to be found at Campden. The young master made him turn back; and they speedily arrived at Ebrington, a little village between Campden and Charingworth, where lived a man named Daniel, who knew the Harrisons well. Here came the first hint of tragedy. Knocking at Daniel's door, young Harrison inquired whether anything had been seen or heard of his father on the previous night. "Yes," replied Daniel, "he called here some time in the evening and said he was on his way home. I asked him to stay awhile; but he stayed not, and seemed in haste to get home." It was clear, now, that the steward had started to go home, at

any rate. But he might have turned back. On, then, the son and Perry walked, and half-a-mile brought them to Paxford. Nobody here had heard anything of the missing man, though, as might be expected, he was perfectly well known to everybody. Back, therefore, the pair of searchers turned. They had not proceeded very far, when they met a villager, to whom they put the question, now familiar, "Have you seen aught of old Mr. Harrison?" The villager had not. But he had heard of something rather curious—to wit, that a poor woman, on her way to lease (glean) in the fields, at sunrise, had found in the road a hat, a band, and a comb. The villager was able to give the name of the poor woman, as well as to point out the field in which he believed she was gleaning.

Son and servant mended their pace, nor were they many minutes in finding her whom they sought. Yes! she said, she had found a hat, a band, and a comb, lying on the highway between Ebrington and Campden. She had put them in a safe place under the hedge, while she gleaned. A visit to the hedge—and Edward Harrison's horrified eyes saw his father's hat and comb, both cut and hacked. The band was even worse; for it was unmistakably bloodstained.

A few pence was enough to induce the woman to leave her leasing, and to show the place where these three ominous tokens had been found. Worse and worse! The spot was at a point where the road had been cut through a great furze brake—the very place for a robber to lie in ambush for his prey, and to hide any evidence of his guilt. Young Harrison and Perry plunged into the bushes, searching for traces of a struggle; for traces of blood; for, mayhap, a corpse. The son called loudly on his father, hoping to find him no worse than

wounded. But no voice replied; and not one trace or one clue could the searchers find.

Meanwhile, the poor gleaner had fled, divided between horror, fear, and the natural longing of an ignorant woman to tell great news. Before an hour was over she had used her tongue so effectually that every man, woman, and child in Campden had deserted the village and was trampling down the bushes of the furze brake. For hours they searched. Not a bush but was scrutinised a dozen times over. Indeed, the whole brake was trodden down.

All in vain. No shadow of a trace of the crime—for crime they had now made up their minds it was—rewarded their search. William Harrison had disappeared as completely as if the earth had opened and swallowed him up. The whole countryside was now roused. Rumours flew thick and fast. Every house within a considerable radius was visited. But all was bootless. Nothing remained to tell of the fate of the ancient steward of the manor of Campden, except the hacked hat and comb and the bloodstained band.

The wife of the missing man soon made up her mind that she would never see him more. He had been foully robbed and murdered. But by whom? In less than twenty-four hours suspicion fell, as it generally does—for in the country, people are not satisfied to allow mysteries of this kind to remain unsolved. Who could have murdered the steward? Ah! What was John Perry doing between nine o'clock of the 16th and the early hours of the 17th? According to Daniel's story, the man should have met his master much about the time that Mr. Harrison would arrive at the edge of the furze brake. It was enough. The younger Harrison arrested the servant that very night; and next

day haled him before a justice of the peace. This magistrate—a country gentleman—asked Perry to give an account of his movements on the night in question ; and the suspicions of Mrs. Harrison and her son were not lessened when he told this curious story :

“ I started,” he said, “ down Campden-field, towards Charingworth. It was pitch dark ; and I felt afraid to go on. After I had walked a land’s length, I met William Reed, and told him my errand, and that I was afraid. I said I would go back and fetch young master’s horse, and asked Reed to come back with me to the gate. He did so. I stayed still awhile. Then one Pearce came by, and as he was going across the fields I walked with him about a bow’s shoot ; but I felt afraid again ; and so returned. Pearce came back with me to the gate. I crept into the hen roost to sleep ; but could not sleep. I heard the great clock strike twelve ; and then I arose and set out for Charingworth. But by-and-by a great mist fell, so that I lost my way ; and I crept under a hedge and lay there all night. On the morrow, at sunrise, I rose up, and went towards Charingworth, to the house of Edward Plaisterer, a tenant of my Lady’s. He told me that master had been with him the afternoon before, and had received of him three-and-twenty pounds, but stayed not long with him. Then I went to William Courtis, who said the master had been at his house the day before, but stayed not long. Then I returned homewards, it being about five of the clock ; and met my young master.”

“ A mighty lame tale, John Perry ! ” observed the justice. “ Tell me, prithee, why, if thy heart failed thee, and thou wast afraid to walk alone to Charingworth at nine o’clock, and then at ten o’clock, thou didst pluck up courage to start at midnight ? ”



"At nine o'clock and ten o'clock," replied the prisoner, "'twas mirk, black darkness. But at twelve o'clock, an' it please your worship, the moon had risen, and 'twas bright light."

"A lame tale! A lame tale!" quoth the justice. "Nevertheless, we will see what say Reed and Pearce, and Edward Plaisterer, and William Courtis."

And, accordingly the four men were sent for; and they all corroborated the lame tale. Yet the alibi was not complete. There were great gaps in it. To begin with, Reed and Pearce were not very certain of the times when they met the accused; and, greatest gap of all, the time between about 9.30 p.m., when Pearce parted from Perry at the gate, to 4 a.m., when the serving-man knocked at Edward Plaisterer's door at Charingworth, was completely unaccounted for. The tale was not so lame as before; but still, it so halted that the justice ordered the constables of Campden to hold their prisoner in ward until further inquiry should be made. "Why," he was asked, "did you start at twelve o'clock, when, for all you knew, your master had returned while you were in the hen roost?" To which he answered that at twelve o'clock he saw a light in his master's chamber window; which was never there when his master was at home. In fact, a light was at the chamber window at twelve o'clock.

The town reader should know that it was, and even is now, in lonely places, customary to place a light in a bedroom window to act as a beacon to a belated person.

From the 18th to the 24th of August, John Perry remained in custody at Campden, part of the time at an inn (a queer place to lodge a suspected murderer!) and the rest in the common prison. The justice saw him from time to time, but John stuck to his lame tale.

But to his numerous jailers, Perry was more communicative. One of them he told that a tinker had murdered Mr. Harrison. To others he asserted that his master had been killed and robbed by the servant of a gentleman in the neighbourhood. To another he declared that his master had been murdered, and his body hidden in a rick of beans.

I do not know whether these assertions were manifestations of a peculiar form of humour. Possibly John Perry found amusement in sending the peace-officers on wildgoose chases. Inquiry and search failed to reveal any traces of a tinker. The gentleman's servant, being interrogated, proved a complete alibi. And the stack of beans, having been pulled to pieces, failed to disclose anything except rats.

On the 24th of August, however, the prisoner had been so worked upon that he offered, if he were brought before the justice, to give true information of his master's fate. He was immediately taken to the magistrate; and, being there, told one of the most extraordinary stories that the mind of man could conceive. Proceedings began by the justice asking, "Wilt thou confess now, knave, what has become of thy master?"—a question which showed that the justice, at any rate, believed his prisoner to be able to solve the mystery. "He was murdered, an it please your worship, but not by me," John Perry replied. "If thou knowest that he was murdered, knave, thou knowest, also, who murdered him," which was not illogical. In reply, no doubt, the worshipful justice expected to hear the prisoner say, "I murdered him." That would have been horrible enough. But the answer that was made far exceeded in horror any confession the worthy magistrate was prepared for.

Very slowly and deliberately John Perry made answer, "My mother and my brother Richard did murder my master!" The hearers were astounded, as well they might be. The fact was sufficiently shocking. But to hear a son accuse his mother—a brother, his brother—of the crime of murder made all shudder. As soon as the justice could command utterance, he solemnly warned the prisoner to have a care. "I fear," said the worthy man, "that thou art guilty of thy master's death. Draw not more innocent blood upon thy head; for this thing thou chargest thy mother and thy brother with may cost them their lives."

The prisoner cast down his head: was silent for a minute or two: then said, sullenly, "I speak nothing but truth. If I was to die this minute, I would still say so."

"Then," answered the magistrate, "if thou dost continue in thine accusation, declare now how and when they did this foul deed."

Thus exhorted, John Perry told his story, to a running accompaniment of ejaculations of horror and disgust. Ever since he went into the steward's service, his brother Richard had been at him to rob his master. When he would not, Richard had said that if he (John) would let him (Richard) know when the steward went forth to collect rents, a way would be found to rob the old man. On the morning of the 16th he chanced to meet his brother, and told him that Mr. Harrison had that day gone to Charingworth, to collect money, and that it would be easy to commit the robbery that night. When he (John) was sent out to meet his master, he espied brother Richard posting along the road, on crime intent, and they two went together. When they had gone a little way, they came upon their mother, Joan

Perry, near a garden of Lady Campden's, called the Conygree. This garden had a wall round it, and the gate was locked ; but some of the people on the estate had a key. They saw someone enter the Conygree.

"That must be my master," said John Perry ; "he is taking a short cut home."

Now John also had a key, and this he gave to his brother, saying, "Now you can have his money. I will go take a walk in the field."

After a while, the serving-man returned, to find his master struggling on the ground, Richard Perry kneeling on him, and the mother standing by.

"Ah, rogues, you will kill me," the steward cried.

"Nay, do not kill him," said John. But Richard was made of sterner stuff.

"Peace, fool, peace," he said ; and, drawing a ball of inkle (narrow tape) out of his pocket, he passed the end of it round his victim's neck, twisted the cord tight, and strangled the poor old man. After taking from the pocket of the murdered man a heavy bag of money, which the mother took charge of, the two brothers picked up the body, carried it to a great sink hard by, and threw it in.

As for the hat, the comb, and the band, John Perry averred that he carried them to the highway near the furze brake, and threw them where they had been found by the poor gleaner. But first he had hacked the hat and comb. The murder had not taken long in the doing, and the faithless servant had returned, he said, close to the house at Campden in time to meet Pearce and Reed, and so establish his former alibi.

Upon this confession and accusation, search was made in the sink ; but no body was found. Of course, Joan Perry and Richard, her son, were arrested. They

stoutly denied all guilt ; but John as stoutly persisted in his accusation, and all three wretches were detained in custody. It should be said that the Perrys did not enjoy a very good reputation. Indeed, Joan Perry was a reputed witch. And the charge of witchcraft was then a very serious one. Apart from John Perry's statement, however, there was no evidence whatever of the crime. A slight circumstance soon arose, which appeared to afford some corroboration of John's averment. As the prisoners were being removed in custody, John in front, and his brother Richard some distance behind, Richard pulled out of his pocket a clout, wherewith to wipe his face ; and, in pulling it out, he also pulled out a ball of inkle. " That is my wife's hairlace," said Richard. But one of the guards showed the ball to John, who could not have seen it fall.

" Know you this ? " the guard said.

" Yea, I know it well," was the answer ; " it is the cord wherewith my brother strangled my master."

Richard and his mother were examined on the 25th of August ; and the next day they remained at Campden, where the parson of the parish asked that they might be brought to church. The good man designed to exhort them to confession and repentance. Accordingly, the three unhappy wretches were paraded through Campden that Sabbath morning, under a guard sufficient to prevent escape, but not manacled. All the village stood there to watch them go by ; and they saw something that left no doubt in any man's mind of the guilt of Joan Perry and her sons. Richard Perry was married, and the father of two little children. The bairns, seeing their father walk past, ran up to him, and took him by the hand to walk with him. But hardly had their innocent little fingers touched their

father's than both children began to bleed at the nose. The crowd buzzed with excitement. Up to that moment there had been some who thought John, alone, to be the murderer. But now all doubt of Richard's guilt vanished. And if Richard were guilty, probably the mother, also, had a hand in the crime. Clearly, the Almighty had interposed directly, and had given the ministers of justice a sign.

The mother and her sons were taken to Gloucester, to the September Assizes; but a difficulty arose in trying them. The judge, Sir Christopher Turner, declined to put them on their trial for murder unless the body of the murdered man was found. In this he followed the wholesome rule laid down by Lord Hale: "I would never convict any person of murder or manslaughter," he said, "unless the fact were proved to be done" (*that is, unless someone saw it done*), "or, at least, the body found dead." That the body of Mr. Harrison had not been found was not the fault of the villagers of Campden. They dragged the "great sink near the mill" where John Perry said the body had been thrown. They drained all the ponds. They searched every stack and rick where a corpse might be concealed. They turned over every stone of the ruins of an old castle. In fact, so thoroughly did they search, that when they found nothing many of them darkly hinted that Joan Perry, by her witchcraft, had spirited away the body.

Sir Christopher Turner would doubtless have let the prisoners go; but John Perry held stoutly to his accusation; and there was the dreadful omen of the bleeding noses. On the strength, chiefly, of the latter piece of evidence, the judge sent the prisoners back to jail, so that further search might be made. All that autumn and winter, Joan Perry and her two sons lay in Gloucester

Jail: huddled into one little cell: fed on mere offal, for they had no money to pay fees to jailers: suffering all the agonies of mind and body incident to prison life in those days, when jail-fever claimed its victims by the hundred.

After a while, John was removed from the society of his mother and brother; because he complained that they tried to poison his food. How they came to have the poison about them, he did not explain. The authorities, on their part, did not inquire. It was enough for them that Joan, the mother, was a witch: no doubt she had power to conjure up poison from the vasty deep. They never took the trouble to think why she did not bewitch herself out of prison, if she had these dark powers.

From September to April the three languished in prison. Then they were brought to trial at the Spring Assizes before Sir Robert Hyde. All three pleaded not guilty. Witnesses proved the confession and accusation made by John. The hat, comb, and bloody band were produced; and also the ball of inkle that fell out of Richard's pocket. Several villagers testified how the noses of Richard's children had bled on that memorable Sunday. But other evidence there was none. John now went back on his story. He said he must have been mad when he told it; and that it was quite untrue. Richard and his mother asseverated in the most solemn way that they had neither act nor part in the murder of Harrison. But in those days it was not as in these days, when the judge would have asked some member of the Bar to be counsel for the prisoners, and give them the benefit of a skilled defence. Indeed, in the year 1661, no counsel was allowed to make a speech to the jury on behalf of a culprit standing

charged with felony—though counsel might argue points of law on such a prisoner's behalf. The judge summed up. The jury found all three prisoners guilty; and the judge assumed the dreadful black cap, and pronounced sentence of "Death by hanging" on each of them.

Some few days after, all Campden and the villages round about trooped out to the Broadway Hill, where a gallows had been erected in sight of the scene of the murder. One after another, the murderers mounted the ladder, a rope was adjusted round the neck, and the ladder was pulled away. Joan was hanged first; for it was hoped that on the death of the witch, her baleful influence being withdrawn, John and Richard would confess their guilt. After Joan, Richard mounted the ladder, and for a few moments addressed his old friends and neighbours. "I am innocent," he said, "as God is my judge. I do beseech him"—and he pointed to his miserable brother John—"for the satisfaction of the whole world and of his own conscience, to declare truly what he knows concerning me." But John was doggedly silent. When it came to John's turn, the good minister of Campden begged him to make a clean breast of it. But John looked round the crowd and said, sullenly, "I am not obliged to confess to you." A minute or two after, just before the ladder was pulled away, he spoke again: "I know nothing of my master's death; nor what has become of him. Some day you may, possibly, hear." So John Perry died, unconfessed and unrepentant.

Some two-and-a-half years after the execution of Joan Perry and her two sons, there walked into the village of Campden a man bowed with age, broken with toil, weary with travel. He made his way quietly through



the village street to the great house where now resided the younger Harrison, steward in his father's room. A servant came to the door. The old man spoke. In an instant the servant, his face blanched with terror, turned and fled into the house, shrieking wildly. The whole household was roused; but all the servant could say was, "The door! The great door!" The house-mistress and the other servants hastened to the great door, and they, too, saw a sight that sent the blood from their cheeks. Some cried, "A spirit!" Others said, "It is the old master!" And the old man gently said to them, "Be not afraid. It is indeed your old master, mercifully preserved by the goodness of God."

He was received as one that had risen from the dead. Ere half-an-hour had passed, every man, woman, and child in Campden was either in or trying to enter the hall of the steward's house. Delight was universal; though some thought that young Mr. Harrison seemed not too well pleased at his father's miraculous restoration.

Greetings over, William Harrison told his story; and surely it was as moving a tale, and as wondrous, as has ever been heard by land or sea.

"On the Thursday afternoon," he said, "I was returning from Charingworth, having collected very little rents, for, it being harvest-time, the tenants were mostly abroad in the fields. I waited for some of them to come in, and this detained me until the close of the evening. As I walked homewards, having reached the narrow way amongst Ebrington furzes, there met me a horseman, who said, 'Art thou there?' and rode straight at me. I feared he would ride me down, so I struck his horse's nose with my cane. At that, the horseman tugged out a sword, and ran it into my side, while I,

with my little cane, made what defence I could. Suddenly another fellow jumped out of the furze-bushes behind me, and ran a sword into my thigh; and yet a third man came in.

"They laid hold on the collar of my doublet and drew me into a hedge near the place. I expected they would have robbed me, and left me there; but they did neither. They did not touch my money. Instead, they mounted me behind one of them, drew my arms about his middle, and fastened my wrists together with some contrivance that had a spring lock—at least, I believe it had; for I heard it give a snap as they put it on. Then they threw a great cloak over me, and we set out.

"After journeying some hours, we halted at a hayrick which stood near a stone-pit. Then they took away my money; and, after some time, tumbled me into the stone-pit. There I lay for an hour in grievous plight, when they bade me come out of the pit. I answered, 'Ye have taken my money already. What would ye do with me?' Whereupon he who had told me to come out struck me, and drew me out of the pit himself.

"Then *they filled my pockets with a great quantity of money*, and again mounted me in the same manner as before. All Friday we rode on, I growing weaker and weaker with my wounds, and the pocketfuls of money bruising me much.

"About sun-setting we came to a lone house upon a heath, hard by a great thicket of bushes, where they set me down almost dead. At this house there lived a woman, who, seeing that I could neither stand nor speak, asked them whether or no they had brought a dead man. The man answered, 'No! It is a friend we are carrying to a surgeon.' She

answered, 'If you do not make haste, your friend will be dead before you can get him to one.'

Here I will drop William Harrison's narrative, which is a little prolix, and tell the story of his adventures somewhat more briefly. The desperadoes who had kidnapped him evidently did not (at this time, at all events) intend to kill their victim. At the lone house on the heath they treated him with great kindness. They made him a bed of cushions, and fed him on broth and strong-waters. The woman of the lone house would fain have tended him; but either she was not one of the gang, or was not completely to be trusted—at any rate, they would not allow her in the room. A little girl was allowed to come in and wait upon them.

Very early on Saturday morning, the kidnappers resumed their journey, their victim riding as before. A painful but uneventful day's travel brought them to a tiny hamlet, where they rested the night; and again the prisoner was treated not unkindly; for he was accommodated with a bed of cushions. On Sunday morning, they all set out again; and very soon it became evident that they were nearing the sea. But it was not before about three o'clock in the afternoon that the cavalcade rode into Deal. Here they were met by a man with whom two of the kidnappers talked earnestly for a long time—apparently bargaining. "Seven pounds" was mentioned. At last, Harrison was carried into a boat, and rowed to a ship, where his wounds were dressed.

On the ship were many other people, prisoners like himself, who had no idea what their fate was to be. For six weeks the ship sailed the seas, by which time the steward of Campden was healed of his wounds and bruises; and it seemed that the vessel was in southern

waters ; for the weather was very hot. One day the master descended into the hold, and said to his prisoners, " I discover three Turkish ships bearing down on us."

Give us arms," replied they, " and we will fight to save the ship."

" Nay," quoth he, " keep you close." With which he went on deck. In a few hours' time, the unlucky wretches were called on deck ; and were not long in learning their fate. For two of the Turkish ships were alongside ; and into one of these the prisoners were transferred. There they were put in a dark hold, and sailed they knew not whither.

How long they were in this condition, none of them knew ; for there was neither day nor night in the hold ; but, in the end, they reached their destination, and were landed at Smyrna, then, as now, the chief port in the Levant. The reader will have guessed, long since, that slavery was to be the lot of these unfortunates. On being interrogated as to his trade or calling, William Harrison had the wit to say that he had some skill in physic : he had no mind to work in the fields. He was purchased by an aged physician of Smyrna, who had once lived in England, and was not an unkind master. He set his slave to light tasks, and did not ill-use him ; except on one occasion when Harrison did not do his work well ; and then the Turk's stiletto and the slave's throat nearly made each other's acquaintance.

After about twenty-one months, the physician fell sick, and, feeling death's hand on him, he called for Harrison, and said to him, " I am about to die. Shift for yourself." You may be sure the slave lost no time in so doing. Immediately the breath was out of his master's body he made his way to the seaside, and

found a ship of Hamburg, bound for Portugal. To his entreaties to be taken on board, the master of the ship returned a point-blank refusal. Every outgoing ship, he said, was searched; and if a runaway slave were found harboured there, the ship and cargo would be forfeited, and it would go hard with the lives of the master and crew. At length, however, two of the crew agreed to smuggle the fugitive on board, provided he were content to play the stowaway the whole of the voyage—a condition gladly assented to.

"So," said William Harrison, "they took me aboard, and placed me below in a very uneasy place, and obscured me with boards and other things." Luckily, the official searchers did not find the runaway; and, after enduring many hardships with an endurance wonderful for a man of seventy, he arrived at Lisbon, and went on shore. He had no money; but he had a sublime trust in Providence. And it really seemed as if some Benevolent Power was watching over him; for, as he was leaning against a wall, tired and almost despairing, he was accosted by a gentleman who turned out to be an Englishman. From that moment, William Harrison's troubles were over. His countryman gave him lodging, food, money, and a passage to Dover, whence he speedily made his way home.

This is, in the plainest terms, "a true account of the great sufferings and happy deliverance" of William Harrison, of Campden, in the county of Gloucester.

Now, I wonder, who can solve the mysteries of this wonderful true story? Why, and by whose directions, was William Harrison kidnapped? For it is plain that the motive of his captors was not to rob, but to remove the old steward. Obviously, an old man of seventy would be worth very little to sell as a slave. A few

people suspected the old man's son, who, they said, was the only person who had anything to gain by the proceeding; but no sort of evidence existed to justify such a monstrous charge. Why, again, did the kidnappers give Harrison his money back, after once taking it from him?

And who can say why John Perry confessed to the murder? Above all, who can say why he accused his own brother, and the mother who bore him, and suffered them to be done to death? I have only one theory—the simplest possible—that John Perry was of weak intellect, and was driven quite mad by the charge of murder; that his jailers teased him to confess; and that his distorted mind really believed the truth of the story. On the other hand, nobody at the time seems to have found anything strange or unusual in his conduct. In these days, the police and the magistrates are very careful to investigate most searchingly into the truth of a confession of murder. One of the forms of insanity is a mania for confessing to murders.

Two things are clear: John Perry was either mad or a murderer; and Joan and Richard ought never to have been convicted.

### III.

## THE "MANCHESTER MARTYRS."

*The Case of Allen, Larkin, O'Brien, Shore, and Maguire.*

IN the late '60's, the British Government found itself face to face with an Ireland seething with rebellion. The fire had smouldered for three centuries, to break out in a flame every now and then when some extraordinary distress, or some grievance unusually pressing, fanned it. In the year 1867 it broke out in a conflagration of startling vehemence. I have nothing to do, in this place, with politics; and I express no opinion on the Irish demands. For me it is enough to state that at the time of which I write the Fenian and kindred organisations thought the day had come to set Ireland free from British domination, and that by force and arms. Support readily came from the Irish-Americans. Money, some arms, and many organisers found their way across the Atlantic; and not only in Ireland, but all over the British dominions, bodies of fanatics, ludicrously few, ludicrously ill-armed, ludicrously inadequate in every way for the task, sought to overturn the might of a gigantic Power.

As a rule, those attempts at armed rebellion were nipped in the bud. British police spies abounded in the very heart of the Fenian organisation; and informers were easily tempted by the promise or the hope of reward. Once or twice, where the secret had been well

kept, there was an *émeute*, as in County Kerry, where a band of half-armed rebels shot a constable, cut the Atlantic cable (how that was to help them, Heaven knows!), and fled to the mountains. On another occasion, in '67, several hundred youngsters in Dublin took the field. They were, for the most part, shop assistants, clerks, and the like, who had provided themselves with arms of sorts; and one night they stole out of the capital in ones and twos, to meet in the hills, proclaim a National Government, and drive the Saxon out of St. Patrick's Isle. But, alas! The very climate was on the side of the big battalions. That night it rained—rained with pitiless persistency. And it blew—it blew a blast so icy keen that the hottest-blooded revolutionary of them all was chilled to the marrow. Man after man fell out of the ranks; until the Carnot of the Revolution (whoever he was) found himself with an army chiefly consisting of himself and his aide-de-camp. In the small hours of the morning, in ones and twos, some hundreds of dripping, soaked, half-frozen young men crept back into Dublin; and Old Ireland was spared the horrors of a sanguinary revolution at the cost of a little pneumonia and several colds in the head.

Unfortunately, not all the risings ended so harmlessly.

Amongst the Irish-Americans who found their way to the old country were two men who had fought in the American Civil War, in the Federal ranks. One was Colonel Kelly; the other was Captain Deasy. To these two, as experienced soldiers, was assigned the task of drilling, arming, and organising the Fenian forces, and heading the actual outbreak. In the course of their wanderings in this behalf, the pair found themselves in Manchester in the month of September, 1867.



Scotland Yard had been looking for them for a long time ; and had quite failed to find them ; and the two conspirators, who knew this, were pluming themselves on their cleverness. But they reckoned without the luck of the British Government. In the small hours of the morning of a September day, Kelly and Deasy went to see a Mr. Wilson—a friend. A policeman saw them tapping on the door ; took it into his head they were thieves, and arrested (with assistance) the pair of them. While the constable had in his mind no more than a charge of "loitering with intent to commit a felony," the conspirators' guilty consciences immediately assigned another cause for their arrest. They struggled desperately, tried to draw revolvers, and were speedily overpowered. The revolvers, the resistance, and the Irish-American accent of the prisoners prompted recourse to Scotland Yard. And Inspector Williamson came down, and, at the Manchester Police Court, identified the men (who had given false names) as the Kelly and Deasy for whom he and the Irish police were looking.

Now the tragedy comes to be planned. On the 18th of September, Kelly and Deasy were remanded for a week, and in the usual course of things taken to a cell below the police-court to await the arrival of the prison van. Meanwhile, Fenians on the watch in the court had given the alarm ; and certain desperate brethren had made up their minds what to do. The prison van always left the court at about half-past three or four o'clock, after the day's proceedings were over—a fact well known to many of the conspirators. Its route was *via* Ardwick Green—Hyde Park Road—to the jail at Belle Vue. In Hyde Park Road, not far from Belle Vue, is a railway arch, where the Midland

line crosses the high road. Hard by, at this time, was a public-house, and there was a brick-field, where clay was in course of being excavated, adjoining the road.

At about 3.30 on the afternoon of the 18th, an observant person might have seen a number of men hovering about the railway arch. One of them, a tall, intelligent-looking man, apparently between twenty-five and thirty years old, occasionally climbed up on the arch and directed an anxious gaze up the road towards the city. Soon after four o'clock this man called out from the top of the arch, "It's coming," and scrambled down. In a few minutes the black van lumbered down the road. As it was about to enter under the arch, some thirty men, headed by the tall man, ran in a body to meet it. "Stop, or I fire!" shouted the leader of the band. And he pointed a pistol at the driver. On the instant, most of the thirty presented pistols also. Some cried, "Shoot the horses." A volley followed, and one of the two horses plunged as if shot. The other horse swerved aside and stopped dead. In less time than it takes to record the facts, the second horse was shot, and a well-aimed stone brought the driver from the box.

But evidently the police had had some inkling that such an attempt might be made; for instead of the usual escort of two constables, six were seated on the van or standing on the steps, and a four-wheeled cab containing four others followed immediately behind. Inside the van, close by the door, sat Sergeant Charles Brett. Brett was the only man armed—he wore a cutlass. The others, with strange lack of foresight, carried no weapons.

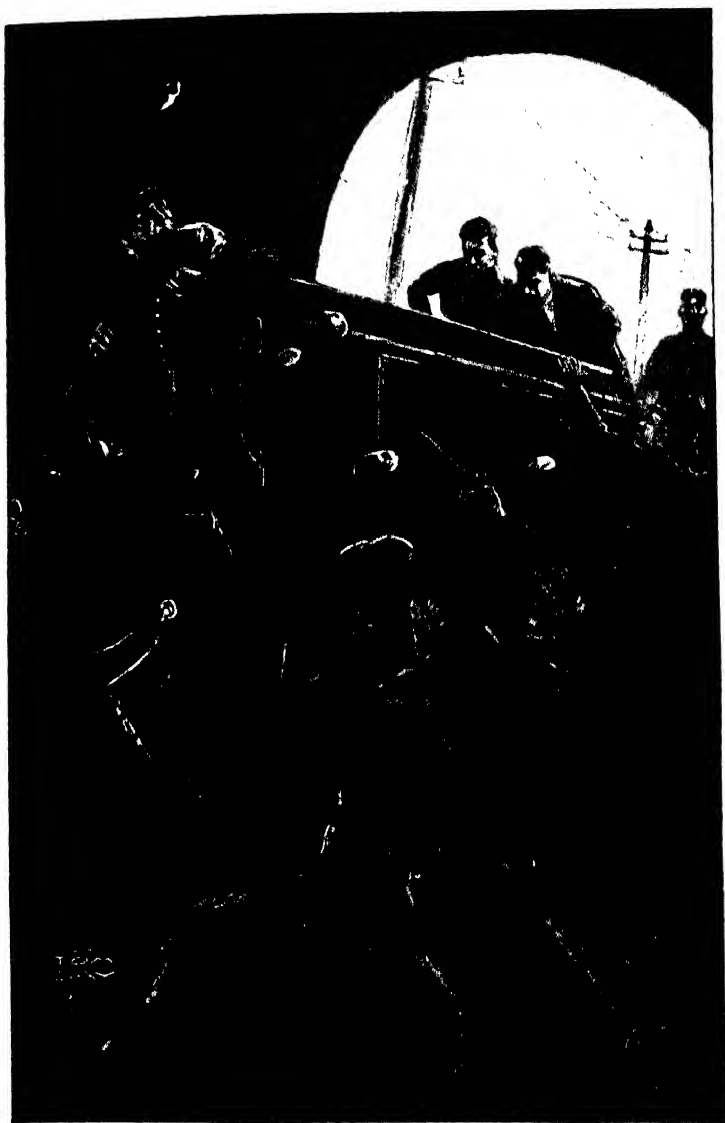
In an instant, there was a hot *mêlée* in progress. The armed gang strove to gain possession of the van. The police did what they could to stave them off. But

aggressors had the advantage both of numbers and of arms. In five minutes they had shot one policeman, seriously wounding him, put a bullet through the tunic of another, and driven the police back. Meanwhile, a second gang of twenty men rushed out of the brickfield bearing large stones. The tall young man had previously clambered to the top of the van, and the twenty, or most of them, joined him there. With the stones they began to batter at the roof of the van; and had not that vehicle been stoutly built and strengthened with iron, they must have reduced it to splinters in a few minutes. As it was, they made one considerable hole. Looking through the aperture, one of them cried out to Brett, "Give us the keys, and we'll let the two men go and do no harm to anybody." The sergeant only answered, "Whatever happens, I shall do my duty to the last."

On the word, stones rained in on the unfortunate officer, wounding and bruising him severely; but he stuck to his post.

In the meantime—the reader must remember that the whole affair from start to finish occupied only a quarter of an hour—some civilians, passers-by and residents, had come to the assistance of the police, and made a rush on the marauders. But courage without weapons cannot long face a row of revolvers in the hands of desperate and determined men. The tall young man, firing to frighten rather than to injure, wounded a civilian in the foot. Law and order fell back defeated.

But the rescuers were no nearer their object than before. Brett refused to give up the keys. There were no windows by which entry could be made. The roof would take too long to batter in. A hatchet, wielded though it was by sinewy arms, made no impression on the door. The ringleader began to fear that help would



THE ATTACK ON THE MANCHESTER PRISON VAN.



arrive, and his party would be overwhelmed; and as it was of the last importance to the Fenian organisation to set Kelly free, he proceeded to desperate measures. He was standing at this time on the step of the van. Placing his pistol close to the door, he fired, and blew in the lock. Whether anyone else at that time fired into the van is a matter extremely doubtful. At any rate, the door flew open, and Brett was found inside mortally wounded. A woman, a prisoner, took the keys from the officer's pocket, and handed them to someone who unlocked two of the inner compartments and released Kelly and Deasy.

Their object effected, rescuers and rescued dispersed and fled. But law and order had been reinforced somewhat by this time. The tall young ringleader was chased and finally captured by an athletic fellow named Hunter. He gave his name as William O'Meara Allen. Another who had been observed in the fray was captured by some railway men; and two more were run down by spectators of the affray. The three last gave the names of Larkin, Shore, and Gould. The real name of Gould was O'Brien. Kelly and Deasy got clean away.

The consternation in Manchester may be well imagined. Troops, both cavalry and infantry, were called upon; every policeman off duty was summoned to turn out; and Manchester, Salford, and the environs thereof were rigorously searched for men with Irish brogues, American revolvers, and muddy boots. Some forty other arrests were made, amongst them that of a man named Maguire.

If the Manchester police were excited, the Queen's Government were hardly less so. It was felt that this kind of political agitation must be dealt with not only sternly, but promptly. So, instead of waiting for the

Assizes, Justices Blackburn and Mellor were sent down in October to Manchester under a special commission to try the thirty-odd men who had been by this time committed for trial on charges of wilful murder and riot.

On the 28th of October the commission sat under circumstances never, probably, seen in England since those chivalrous times when the loyal gentlemen of Scotland and the North rose for the exiled Stuart. The prison van was escorted from Belle Vue to the Assize Courts by a squadron of Hussars in front and five hundred Highlanders with bayonets fixed marching behind. The whole police force of Manchester and Salford was out in the streets, many of the policemen carrying revolvers. The very corridors of the court were filled with armed men. And it may be added that the prison van was taken back at night in the midst of a hollow square of the 72nd Highlanders, armed to the teeth, who trotted the whole distance at the "double."

For four days the trial lasted. In striking contrast to the old State trials, no attempt was made to press for a conviction. Digby Seymour, an eloquent and able advocate, defended Allen, Shore and Gould; and Serjeant O'Brien, Maguire and Larkin; and a splendid fight they made of it. As to all the prisoners except Allen and Larkin, the defence was an *alibi*. As to Larkin, it was contended that he did not take any part in the affray; and as to Allen, that he did not fire the fatal shot. The case was strongest against Allen. He had been seen (indeed, little attempt was made to deny it) to fire his pistol two or three times—once at the ground, to frighten the crowd, and once at the lock of the van. A woman inside the van swore that she saw him fire the fatal shot through the ventilator; but that evidence is almost incredible. To begin with, the man who fired

was completely hidden by the door. Secondly, the woman was, confessedly, in a state of mortal terror. The evidence of a police-constable, Shaw, who kept his eye on Allen all the time, was that Allen fired at the lock.

But it was enough, for the purpose of fixing the guilt of the prisoners, to prove that they were present, assisting in the rescue; that they went there with intent to effect a rescue at all hazards; that arms were used by some of the rescue party; and that Brett was killed by the use of those arms—however accidental the killing might be. And there was ample proof that all except one of the accused were of the rescuers—indeed, four had been captured while running away from the spot. Maguire's was the weak case: he had not been identified by any of the police, and only by one bystander positively.

Digby Seymour cross-examined with great skill; and one witness, whose evidence was very positive, he raked through and through. The man admitted that he had read a proclamation offering a reward for evidence leading to the conviction of the ringleaders. He was asked if he read it carefully; if he came forward to give testimony after reading it; if he expected any of the reward. To all of which questions he was teased into answering "Yes." Naturally, the next question was: "Has your memory been assisted by the thought of the reward?"—a sort of poser that Seymour excelled in. Never did prisoners at the bar have a more gallant defence. And Digby Seymour's speech was a marvel of eloquence—it was enough to move the heart of a stone. But those who knew him observed that he said very little about the facts or the evidence. In this, he acted wisely, for the facts and the evidence were dead



against him. He chose rather to argue that there was no "malice aforethought," and to criticise the methods of the police in getting up the case.

The inevitable verdict was "Guilty," though the jury did not arrive at it until after two hours' deliberation.

All the prisoners made speeches. Allen affirmed solemnly "as a dying man, in the presence of the Almighty and Ever-living God, that I am innocent." He probably meant that he did not shoot Brett. "I don't say this for mercy. I want no mercy. I'll have no mercy. I'll die as thousands have died, for the sake of their beloved land, and in defence of it." Larkin, for his part, admitted that he was at the rescue. He did not go, he said, "*on purpose* to take life away," but to aid "those two noble heroes, Kelly and Deasy." And then he made this remarkable assertion: "*The man who has taken life, you have not got him.*" He wound up a pathetic address by a fatalistic passage in itself almost touching: "I believe the old saying is a true saying—What is decreed a man in the page of life he has to fulfil it, either on the gallows, or drowning, or a fair death in bed, or on the battlefield. So I look to the mercy of God."

Gould, who said his real name was O'Brien, and that he was an American citizen, read an address, obviously composed for him, of a kind, unfortunately, only too common amongst a large section of Irishmen. Its chief points were an indictment of the English people as tyrants and hypocrites; and a charge that he had been corruptly convicted by the English Government. He steadfastly denied having thrown a stone or fired a pistol, and affirmed that his *alibi* was correct. He did not meet his sentence with the dignity of Allen or Larkin.

Maguire's address was short and to the point. He stated in the most solemn terms that he had been mistakenly identified. What is more, he was the single prisoner to assert his loyalty to Queen and country. In this connection, it was noticeable throughout the trial that Maguire stood aloof from the other prisoners in the dock ; and that not one of the policemen had sworn to his identity.

Shore made a long speech, and a very excellent one. Even the terrible plight in which he found himself could not restrain his Irish humour. Alluding to some evidence, he observed that someone had said a stone had dropped on his head—a big stone, big enough to kill an elephant. Yet, when he was arrested, not a trace of injury was visible. "If we could go round the country together," said he, "I don't know which of us the people would expect with more curiosity—myself, as the man on whom such a stone had fallen ; or him, as the man who would swear to it." He, also, claimed American citizenship, and said his name was Edward O'Meagher Condon. After much eloquence on the wrongs of Ireland, he concluded dramatically, "I have nothing to regret, to retract or take back. I can only say, 'God save Ireland!'"

"God save Ireland!" the other three shouted.

All the prisoners were condemned to death ; but in Shore's case the death penalty was respited, because he had not been armed with a pistol. Maguire was more fortunate. Inquiries made convinced the Home Secretary that his story was correct, and that he had never been near the scene of the outrage. He, therefore, was released at once. In my opinion, the one thing against him was that he had allowed his defence to be mixed up with and undertaken by the same counsel as the

prisoner Larkin's. Had he been separately defended, he would, I think, never have been convicted.

The other three men, Allen, Larkin and O'Brien (or Gould) were executed publicly on the walls of the New Bailey Gaol, Manchester, on the 23rd of November. To the last they hoped for a reprieve, believing that the Government would never dare to execute "political" murderers. The execution was attended by over 10,000 people; and so fearful were the authorities of a disturbance that 500 infantry and a squadron of Hussars, with two batteries of artillery guarded the prison. The whole police force and some hundreds of special constables were also on duty in Manchester and Salford. But the grim sentence was carried out quite quietly. All the prisoners received the last consolations of religion with edifying fervour. Allen and Gould met their fate with firmness, but Larkin fainted twice during the hideous preliminaries. "Jesus, receive my soul!" they exclaimed with much earnestness. A bolt was pulled, and the "Manchester Martyrs" had gone to their doom.

Writing purely as a lawyer, and having no sympathy whatever with either the aspirations or the methods of the "Manchester Martyrs," I am constrained to declare that, although the prisoners who were executed, along with Shore, were undoubtedly guilty of murder in the eye of the law, yet none of them was guilty of the slaying of Brett in fact. I mean, that I have no doubt these four men did conspire to rescue Kelly and Deasy, and that by force and arms; and, therefore, were liable for even an accidental slaying during the progress of the affray. But otherwise the case seems weak. Larkin and Gould, be it observed, were not charged with the actual slaying. And the case against Allen of firing the bullet from which Brett died is very weak.

Shaw, the constable, who was looking on from outside, swore that Allen fired at the lock of the van. The women inside both swore that the fatal bullet came from a pistol that was pointed through the ventilator. I am inclined to believe both of these stories. Now Shaw was watching Allen all the time, and did not see him fire through the ventilator. Therefore, it could not have been his pistol that was pushed through the ventilator. If this is so, Allen's story was, on the whole, true; and there is corroboration of Larkin's assertion: "The man who did take life, you have not got him."

Every year the Irish Nationalists of Manchester and Salford celebrate the memory of the "Martyrs." One martyr they omit to honour. I mean the obscure policeman who, faithful to his trust, "did his duty to the last."

## IV.

### THE CLERKENWELL EXPLOSION.

#### *The Trial of Michael Barrett and Others.*

HARDLY had the ferment caused by the Manchester outrage, which forms the subject of the third of these "notable trials," died down, before the country was again thrown into violent agitation by a feat of Fenianism even more daring than the rescue of Kelly and Deasy. This time, it occurred in the very heart of London; once more in broad daylight, and once more, also, an attempted rescue.

In December, 1867, the spies in the employ of the Government denounced a plot, then about to be executed by the Fenians, for seizing Chester Castle, capturing the Dublin mail boat, and shipping a large quantity of arms over to Ireland. The informer was a man named Corydon. He denounced, in particular, two Fenians named Burke and Casey (Burke's *aliases* were Berry and Winslow), who were arrested and accused of treasonable conspiracy. Brought before a magistrate in the ordinary course, the two accused were remanded; and, while under remand, were imprisoned in the House of Detention at Clerkenwell—a prison of the ordinary kind.

On the 13th of December, between three and four o'clock in the afternoon, the thickly-populated district of Clerkenwell was startled by the sound of a loud explosion. A great piece of the wall surrounding the



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prison yard was blown down. Various passers-by were injured—in all, forty people; of whom one was killed on the spot, and three died within a few days. Excitement rose to fever heat in London. Preparations were made to resist a grand attack by the Fenian army. Thousands of special constables were sworn in. And the Government issued a proclamation offering £400 reward for information leading to the conviction of the offenders. Before long, three persons were seized—Timothy Desmond, a little tailor, Jeremiah Allen, a shoemaker, and Ann Justice. These were all known to be Fenians, and they lived about Clerkenwell. Ann Justice tried to strangle herself with her garter, but was prevented by a warder.

Not long afterwards, the Glasgow police arrested two men for firing off pistols on Glasgow Green. One of these, a handsome young fellow of the labouring class, gave the name of Michael Barrett; and, as he was suspected of being a Fenian, and had been lost sight of by the Glasgow police about the time of the Clerkenwell explosion, Scotland Yard was asked to send someone down to look at him. In the result, Michael Barrett was carried up to London, identified by several witnesses, and charged with being one of the persons responsible for the outrage. In addition to the four persons already named, the police laid hands on William Desmond, John O'Keefe, Nicholas English, and Patrick Mullany. One of the original two was released (Jeremiah Allen); and before the case came on, Patrick Mullany, either in the hope of the £400, or to save his own neck, offered himself as Queen's evidence.

In the result, Barrett, the two Desmonds (not related), O'Keefe, English, and Ann Justice found themselves indicted at the Old Bailey for the murder of Ann



Hodgkinson, the person killed on the spot by the explosion. No two finer judges could have been found to try the case than Chief Justice Cockburn and Baron Bramwell. Cockburn, celebrated for his masterly conduct of the Palmer case, was a judge of stern, unrelenting justice ; and if he had, on the bench, an equal in logical exactness of thinking, that equal was Baron Bramwell. The learned Baron afterwards became a Lord of Appeal, and his name is enshrined in the pages of the Law Reports as that of a Master of the Common Law. In argument, a sophistry, a wrong conclusion, an illogical inference, never escaped him ; and to this day "Bramwell's dilemma" is famous in the Courts. If ever a tribunal would see to it that the prisoners were tried on the evidence, and on the evidence alone, this was the tribunal.

Counsel for the Crown were also a very brilliant company. Sir John Karlake (Attorney-General), Sir Baliol Brett (afterwards Lord Esher), Mr. Hardinge Giffard (afterwards, as Earl of Halsbury, Lord Chancellor), Mr. (now Sir) Harry Poland, the finest prosecuting counsel, and the fairest, ever heard, and Mr. (afterwards Mr. Justice) Archibald. The prisoner Barrett was defended by Mr. J. B. Greene ; Timothy Desmond by Mr. (now Sir) Douglas Straight ; William Desmond by Mr. Warner Sleight ; English by Mr. Keogh ; and O'Keefe and Ann Justice by that brilliant couple—Montagu Williams and Edward Clarke.

On Monday, April 20th, 1868, the trial began in a court so crowded that people could hardly breathe. The bench, and other privileged parts, were packed with a throng of fashionable women, who sat patiently hour after hour as the case proceeded. Curiously enough, Michael Barrett, whom the prosecution charged with

being the ringleader, had become a hero with the women. During the investigation before the magistrates, his handsome face, his dauntless bearing, his evident manliness, had won for him the admiration of the fairer half of Belgravia and Mayfair; and the hero-worshippers braved the stuffy atmosphere and the crowded discomfort of the Old Bailey that they might gaze upon their hero under his trial.

The early evidence went to show that the explosion was caused by a large quantity of gunpowder, contained in an old petroleum cask that had been wheeled up to the prison wall in a handcart, tilted up (the cart being left tilted to keep the cask in position), and exploded by means of a fuse. In fact, a very primitive apparatus, and a very audacious mode of attack.

The warders testified that the day before the explosion (December 12th) the prisoners, including Burke and Casey, had been out at exercise in the yard between three and four o'clock, when Burke fell out of the ranks. He walked over to the wall; leaned against it; deliberately took off his boot, and slowly brushed his stocking with his hand; looking up, the while, at some houses in Corporation Lane.

The place where he stood was the part of the wall farthest away from the point where the explosion took place next day. And the jury were asked to infer that Burke had intended, by his acts, to indicate to his would-be rescuers the place where he would be standing when they made their attempt.

In some way not disclosed at the trial the prison governor had been warned; and on the day of the explosion the prisoners were not taken out to exercise in the afternoon, but in the forenoon.

After some evidence explanatory of the *locus in quo*,

the Attorney-General said, "Call Patrick Mullany." The scene in court when the approver walked into the witness-box could never be forgotten by the spectators. The other prisoners looked fiercely on the miserable wretch—for an approver is always a wretch—but Michael Barrett turned on him a glance so fiery, so wrathful, so contemptuous, that the witness seemed to shrivel and shrink beneath it.

He was, he said, a military tailor, living in Golden Square. About fifteen or sixteen months before, he had become a Fenian, on the introduction of the prisoner English. He met O'Keefe, Burke, and other Fenians at the meetings. After Burke's arrest, a "Captain" Murphy called on him, bringing with him a man named Jackson—the man Jackson was the prisoner Michael Barrett; and they all three conversed together as to the best way of getting Burke out of prison. A Mrs. Barry and the prisoner Ann Justice gained access to the prisoners Burke and Casey by representing that they were their sisters, or cousins, who had brought them clean clothes, and sometimes, also, dinners. In this way, Mrs. Barry smuggled out of prison a note from Burke, written in invisible ink. Murphy asked witness to go and get a little green copperas, which witness did. On making a solution of the copperas, and applying it to the paper, writing appeared.\* This happened on the 4th of December.

The prosecution were unable to produce the note; but the witness professed to be able to recite its contents from memory; and according to him it ran thus:—

"DEAR FRIEND,—You know my position here. There is a house near this place known as the

\* This points to the use of chloride of gold as the "invisible ink"

'noted stout house,' and near that there is a sewer and a weak part of the wall. If you get a barrel of powder and place it there you will be able to blow the wall to hell. Get the men to buy the powder in small quantities; and it must be done between three and four o'clock. If you don't do this you ought to be shot."

Murphy showed this letter to Barrett. Next day (December 5th) there was a meeting of four or five of the brotherhood. Barrett was there, and William Desmond, but none of the other prisoners. Murphy appealed for money to buy the powder, and the men contributed, some £1, others 18s., 16s., and so on. The next meeting was on the 11th of December, when Murphy said he had the barrel. The prisoners William Desmond and Barrett were present on that occasion also. It was then stated that the attempt would be made the next day.

Next day the witness met Barrett late at night, and asked him how they had got on. Barrett replied: "The Captain (Murphy) failed to light it. I'll light it myself to-morrow." At this time Barrett wore beard and whiskers.

The following day was the fatal 13th, and at 2.30 that day he saw all the prisoners, except the woman, going off together. That night, also, witness met Barrett. To his surprise, the latter had shaved his whiskers off; he also wore a different coat. Witness "chaffed" him on the disappearance of his whiskers. "Sh!" said he, "I fired the barrel."

The cross-examination of the witness did not lack vigour. Mr. Keogh began the firing. "Are you a Fenian?" "Yes; I am."

"You say you saw English and the Desmonds going off together?"

"Yes."

"Did you go, too?"

"No."

"How do you know where they were going?"

"They said they were going off to the explosion."

Here Cockburn intervened:—"Do you mean to say they used the word 'explosion?'"

*Witness*: "I cannot say that, my lord."

*Lord Chief Justice*: "I thought not; and that is why I asked you."

*Witness*: "I cannot exactly say whether the word explosion 'was used or not."

*Lord Chief Justice*: "Your sympathies were with the Fenians, I suppose?"

*Witness*: "They were, my lord."

*Keogh*: "For how long?"

*Witness*: "For six years."

*Keogh*: "Were you plotting this apostasy during all these six years?"

*Witness*: "I did not plot any apostasy."

*Keogh*: "Then it was the fear of being arrested which prompted you?"

*Witness*: "I knew English was 'splitting.'"

*Keogh*: "Do you expect any money?"

*Witness*: "I never asked for any money, nor have I been promised any. I turned for the sake of my young family, and on account of the state of my health."

*Keogh*: "What did you think of your young family when you entered into this conspiracy?"

*Witness*: "I never gave them a thought then."

*Keogh*: "Come, sir, what do you expect?"

*Witness:* "I expect nothing. I don't know what I am to get."

*Keogh:* "You stand charged with treason-felony."

*Witness:* "I suppose I do."

*Keogh:* "Do you expect to undergo a sentence for that if you are found guilty?"

*Witness:* "It rests with the Crown to do what it likes with me."

A good deal more of cross-examination of the same sort was administered by counsel for Barrett; but he did not succeed in shaking the witness from the position that Barrett had said beforehand he was going to fire the barrel, and afterwards that he had lighted it.

The evidence so far only touched Barrett and W. Desmond. The next witness's testimony was directed against Timothy Desmond, and was to the effect that before the explosion Timothy had said, "We are going to blow up the House of Detention." The same witness also said that English came on the night of the explosion and asked for money to send "them" away—"them" meant the people who "had done the deed." This witness was severely handled by Douglas Straight. He had to admit that he was a deserter from the Army; that he was addicted to drink; that he had been twice in the workhouse. He then admitted that Timothy Desmond was very drunk on the occasions spoken to. Finally, Montagu Williams persuaded him to say that he expected part of the £400 reward if the prisoners were convicted.

It must be said that the evidence of the identity of the men who took part in firing the barrel was extremely unsatisfactory. The most positive evidence was that given by two small boys who had been playing about, and naturally took an interest in seeing somebody light

a fuse. One of the boys had been near enough to have a thumb blown off by the explosion. Their evidence only went to identify Barrett. As to the other prisoners, the witnesses would only say, "to the best of my belief"; "I will not swear"; "I think, but am not certain," that so-and-so was one of the men. William Desmond and Ann Justice had been caught running away from the scene of the explosion; but as a man named Allen, who had already been dismissed, was caught also running away, there was not much in that.

At the end of the evidence for the prosecution, O'Keefe and Ann Justice were released, as there was no evidence against them; and then occurred one of the most dramatic incidents of the trial. As the woman was leaving the dock, she turned to Barrett, and solemnly kissed him on the forehead. It was a touching sight; but I am open to say that it had no very good effect on Barrett's case.

Indeed, the case against Barrett was pretty black, and it became no better when his counsel put into the box some four or five witnesses from Glasgow to prove an *alibi*. All these witnesses broke down badly under cross-examination, and damaged Barrett's case very much. Had he relied on the defence of lack of evidence of identity, and that the informer Mullany was not to be believed, he would have stood a much better chance, especially as the Chief Justice, in his summing-up, pointed out that Mullany ought not to be believed unless he was corroborated. My own reading of the evidence is that Mullany's testimony was not enough to hang a dog on.

As it was, the jury found all the others Not Guilty; but Michael Barrett Guilty. The speech delivered by Barrett before sentence was a wonderfully pathetic piece

of oratory. He complained of the injustice of his conviction, on the ground that there was not sufficient evidence to warrant the verdict. Adverting to Mullany "that fiend of iniquity," he prophesied for him a life of misery. "In the words of Holy Writ:—

"When your fear cometh as desolation, and your destruction cometh as a whirlwind; when distress and anguish come upon you.

"Trouble and anguish shall make him afraid; they shall prevail against him as a king ready to do battle.

"Men shall clap their hands at him; and shall hiss him out of his place.'

". . . It may seem hard to part with life so soon; but since it is the will of God to call me, I will meet death without a murmur; and as He in His all-wise way directs all things for the best, I venture to hope it will please God to turn even the sacrifice of my poor, worthless life to the account of my poor, suffering country. I shall now ascend the scaffold with firmness, strengthened by the consolatory reflection that the stain of murder does not rest upon me, and mingling with my prayers for my soul those for the regeneration of my native land. I have done!"

There was not a dry eye in the court. Ladies sobbed; barristers well accustomed to tragic scenes, who had heard the death sentence passed so often that it had almost ceased to move them, wept like children. Even the judges, accustomed as they were to restraining all show of emotion, could hardly proceed. There was something of manliness, of loftiness of spirit, and of deep piety about Michael Barrett that commanded respect and inspired admiration in all who heard him. What a life to be lost to the world!



For lost it was. A strenuous agitation, both in and out of Parliament, resulted in a respite being granted what time the Home Office made further inquiries into the truth of the *alibi*. Mr. Poland was sent down to Glasgow to investigate the matter—a most unprecedented step. But eventually, after the most careful consideration, it was found impossible to believe the prisoner's story. John Bright made a fight for the poor fellow's life, and pressed upon the Government the shaky character of the evidence for the Crown. One remarkable thing, however, is to be noticed. Barrett never, really and in terms, declared that he was not guilty of causing the explosion.

At length, on the 26th of May, 1868, the dread sentence was carried into effect—one of the last occasions of a public execution in England. Since his conviction he had displayed a humility of demeanour, a penitence and a fortitude that softened even the adamant hearts of the prison warders. And the last night of his life he spent in prayer. Firm to the last, he bore the yells and the scrutiny of the crowd unmoved, and climbed the fatal ladder with perfect coolness. So died Michael Barrett, in his own belief, at least, a martyr for his country; and, in any case, a man one might have wished to live.

## V.

### A STORY OF THE BLOODY ASSIZE.

#### *Trial of Dame Alice Lisle.*

NOWADAYS, political battles, even the most severe of them, are fought by ballot boxes, and speeches, and articles in newspapers. And every combatant may fight his hardest with impunity; for he knows full well that no harm will come to him in any event. It was not always so.

The politicians of the seventeenth century lived precarious lives. The party in power pursued its opponents with penalties and forfeitures, with imprisonment and death. An unsuccessful leader might at any time be impeached or indicted for treason; and the prominent statesman always had before him a dim vision of the headsman's axe. Under such circumstances, armed risings were frequent. Sometimes they succeeded, and were called "Glorious Revolutions." Sometimes they failed, and were dubbed "Detestable Conspiracies and Rebellions."

Under the style of government that prevailed during the reigns of Charles I. and II., James II., and under the rule of Oliver Cromwell, it was essential to the Government to have upon the judicial bench some judges who could be relied upon to assert authority by convicting practically everybody accused of an offence against the State. A hanging judge was as essential to the ruler's safety as an armed bodyguard. And of all the judicial instruments of

tyranny, George Jeffreys stands first and foremost. The son of a pauper squire of North Wales, this remarkable man rose, by his own abilities and force of character, to be Common Sergeant of London at the age of twenty-three, Recorder at the age of thirty, Chief Justice of the King's Bench at thirty-five, and Lord Chancellor at thirty-seven. As a judge, in civil causes he was excellent. His rough common-sense and the keenness of his vision enabled him to see into the kernel of a case at once; and he dispensed justice with no niggard hand. But when he had to try political prisoners he was another man. His conduct was positively ferocious. He hunted the accused, not with the object of trying them, but with the sole intention of securing a conviction and passing the capital sentence. He jested with his victims like a tiger toying with its prey. Most judges shrink from pronouncing sentence of death; but Jeffreys revelled in sentencing a traitor to be hanged, drawn, and quartered. He always opposed a respite or remission of sentence. In short, he fully earned the title of "Bloody Judge Jeffreys," bestowed on him by his shrinking contemporaries. In a way, he contributed largely to procure political liberty for England; for the horror excited by the Bloody Assize, when he presided over a commission which travelled the Western Circuit after Monmouth's rebellion—its tale of victims amounted to about 300 executed, and thrice as many sent to the plantations—was to a great extent responsible for the overthrow of James II.

I shall not trouble the reader with the history of the times further than to remind him that the Duke of Monmouth's rebellion was crushed on the 6th of July, 1685, at the battle of Sedgemoor.

The rebels having been conquered in the field, it

remained for Jeffreys to wreak upon the survivors the woe that has, in all ages, been the lot of the vanquished. A good and just judge ought rather to allow ten guilty to go free than to condemn one innocent ; but Jeffreys' principle was rather to hang ten innocent men than suffer one guilty to escape. Especially was he severe on those who had, after the battle, received rebels into their houses, or helped them with food or money.

To his sanguinary mind it must have seemed like a special dispensation of Providence that there should be delivered into his hands an accused such as Mrs. Alice Lisle. This lady was the daughter and heiress of Sir White Beckenshaw, of Moyle's Court, Hampshire ; and had married, at the age of about sixteen, John Lisle, an eminent Puritan lawyer. In the contest between Charles I. and his Parliament, Lisle took an active part against the king ; and on the trial of the royal martyr was very active as a manager on behalf of the Commons. His wife, it is said, entreated him to have no part in the king's condemnation. Cromwell made him a peer—hence his wife was commonly spoken of as "Lady" Lisle. In 1660, seeing the restoration of the Stuarts about to become an accomplished fact, Lisle fled to Lausanne in Switzerland, and for four years lived there with his wife ; but in 1664 he was shot dead by an Irish assassin who thought by his act to deserve well of Charles II. One of his sons by Alice Lisle married a daughter of Hyde, Charles II.'s Lord Chancellor, and thus became the brother-in-law of the Duke of York, afterwards James II. By the intercession of James and the Hydcs, Charles II. was induced to pardon Lisle's widow (who had done nothing), and to restore to her the estates that had descended from her father—*i.e.*, Moyle's Court.

Thenceforth Mrs. Lisle lived a quiet life, but was known to be sympathetic towards the Nonconformists, and showed much benevolence towards the persecuted dissenting ministers. This fact alone was enough to excite against her such a man as Jeffreys. And the fact that she was the widow of one of the regicides was, to him, conclusive proof of her treasonable disposition.

The crime she was charged with was high treason in having given refuge to one Hicks, a Presbyterian minister who had himself been guilty of treason by taking part in Monmouth's rebellion.

That Hicks had been a rebel, and guilty of treason in joining Monmouth, was clear beyond all doubt; yet he had not been convicted of the offence; and it was very doubtful in point of law whether anybody could be convicted of harbouring and assisting him so long as he was, in the eye of the law, not guilty. But this mattered little to Jeffreys. The Chief Justice had made up his mind to force a conviction. Indeed, before he left London he had obtained a promise from the king that if Mrs. Lisle were convicted she should on no account be pardoned or respited.

The state of the poor old woman as she stood in the dock was pitiable enough. She was seventy years of age, and infirm—indeed, she was so “thick of hearing,” as the report has it, that one Matthew Brown was allowed to sit by her and keep her informed of what was being said. One report states that she fell asleep, out of very weariness, during the trial. And the law allowed her no counsel to defend her. For it was not until 1747 that prisoners accused of treason were allowed legal aid.

The prisoner having pleaded “Not guilty,” Pollexfen, the great Whig lawyer, opened the case for the

Crown in a speech not very unfair for those times. At the end of it, Mrs. Lisle attempted to speak, but was stopped by the presiding judge, who, after telling her what the proper form of proceedings was, added, with his customary brazen impiety: "Though we sit here by authority from the king, yet we are accountable, not only to him but to the King of Kings, the Great Judge of heaven and earth; and therefore are obliged by our oaths and upon our consciences, to do you justice; and by the grace of God we shall do it, you may depend upon it." The reader will see how Jeffreys discharged his duty to the King of Kings.

The first witnesses called were Mr. Pope, Mr. Fitzherbert, and Mr. Taylor, who swore that they had been taken prisoners by Monmouth's army, and had seen Hicks taking an active part among the rebels. Then came the real evidence that was to fix guilt upon the prisoner—the messenger who had gone to Moyle's Court, asked Mrs. Lisle to shelter Hicks, and afterwards had guided Hicks and Nelthorp to her house. His name was Dunne; and Pollexfen prefaced his evidence by observing to Jeffreys, "This fellow Dunne is an unwilling witness; and therefore, with submission to your lordship, we do humbly desire your lordship would examine him a little the more strictly." The ferocious Chief Justice metaphorically licked his lips.

*Jeffreys*: "You say well" (Then turning to the trembling witness, he bent his brows on him.) "Hark you friend, I would take notice of something to you by the way, and you would do well to mind what I say to you." He then proceeded to instruct Dunne on the sinfulness of lying—the poor wretch had not spoken a word up to this point—on the injury he would do to his "precious immortal soul" if he kept back the truth; on the great

verity that if he lied on this occasion he would be "dropped by the great God of heaven and earth into the bottomless lake of fire and brimstone." And, to speak of more mundane terrors, he observed, "If I catch you prevaricating in any the least tittle I will be sure to punish every variation from the truth you are guilty of."

After this comforting preamble, the judge asked the witness questions on the facts, and slowly elicited the following testimony:—

On a Friday night a man came to witness's house and desired him to go of a message to my lady Lisle's. Could not give the date. It was after the battle of Sedgemoor. Could not say how long after. Quite unable to say the name of the man. Never saw him before. By description—he was a short black (*i.e.*, dark) man, with a black beard. He asked witness to go to ask Lady Lisle whether she would entertain Mr. Hicks. Witness was told he would be well rewarded. On the Saturday, accordingly, he went to Moyle's Court, and saw there the bailiff, one Carpenter. To him the message was delivered. He said he would have nothing to do with it, and sent witness to his mistress.

Here, the reader will observe, the evidence becomes most important; for it was essential for the prosecution to prove (1) that Hicks had been entertained by the prisoner; and (2) that she entertained Hicks knowing he was a fugitive rebel. Now Dunne knew the bearing of his evidence as well as any man; and was most anxious to see the lady escape. He, therefore, tried to confine his testimony to facts which he knew the prosecution could prove without him. And as it was clear as daylight that Hicks had been entertained (for he had been caught in the house), the witness continued:—

"I asked my lady whether she would entertain Mr.

Hicks or no, and she said she did not know but she might."

*Jeffreys*: "Well! what then?"

*Dunne* (anxious to keep his tongue from doing any damage): "My lord, I will tell you."

*Jeffreys*: "Ay, prithee, take time to recollect thyself; but be sure thou speak nothing but the truth. What said my lady to thee?"

*Dunne*: "My lady said they might come to her house, and upon those terms I went away home again, and returned that answer to the messenger that came to me. I came home on the Sunday night, and that message I delivered unto him, and told him that *upon Tuesday night* they might come to my lady's."

*Jeffreys*: "You told him they might come on Tuesday?"

*Dunne*: "Yes, my lord, I did."

*Jeffreys*: "Therefore I would fain know from you, how you came to tell him they might come on Tuesday? for you said just now, my lady's answer was, that she did not know, but she might entertain them."

The witness was caught here; and he knew it. For he stumbled a good deal, and hesitated, and tried to gain time. At last it was wrung from him that the prisoner "gave directions." The relentless cross-examination continued—for the judge was determined, if possible, to extract evidence to show that Mrs. Lisle ordered Hicks to be brought clandestinely—thus showing her guilty knowledge. So he proceeded thus:

"Prithee, friend, compose thyself, recollect thyself"—this in a tone of ferocious banter, as a cat might say to a mouse, "Prithee, be not alarmed; let us play together."

To heighten the effect, he paused for several minutes,



during which time he looked steadfastly at the unfortunate witness, dead silence reigning in the court meanwhile. Even the most truthful witness might well be disconcerted by this process; and, be it remembered, Dunne was not a truthful witness.

*Jeffreys* (suddenly, and in a loud voice): "Come now, tell us, did she give you any directions what time of the day they might come thither? Remember yourself well, and tell us what she said to you?"

*Dunne*: "My lord, I will, as near as I can, speak the truth."

*Jeffreys* (in a voice of thunder): "Ay, in God's name, let us have the truth, whatsoever comes on it."

*Dunne*: "I will, my lord."

*Jeffreys*: "Come, then, what time did she give directions that they should come?"

*Dunne*: "On Tuesday, in the evening."

*Jeffreys*: "What time in the evening? Early or late?"

*Dunne* (again trying to hedge): "No directions about the time. Only in the evening."

So the cross-examination went on, the miserable witness being bullied and trapped, until the truth was extorted from him point by point. Indeed, but for the brutality of it, and the bloodthirstiness at the back of it, one can but admire the skill of the cross-examination. The witness would not admit that, so far as he knew, the prisoner knew who Hicks was. Whereupon the Chief Justice broke out, "I only bid you have a care. Truth never wants a subterfuge, it always loves to appear naked. But lying, and snivelling, and canting, and Hicksing always appear in masquerade. Come, go on with your evidence."

Thus exhorted, poor Dunne was compelled to say

that he guided the party to Moyle's Court on the Tuesday by a roundabout way: that he had, on the previous Saturday, obtained the services of one Barter as a guide: that he gave him half-a-crown for his trouble: that on the night in question Barter was discharged eight miles from Moyle's Court; that on knocking at the gate he and Hicks and Nelthorp were admitted.

The next thing to be proved was that Hicks had been "entertained" by the prisoner; and here poor Dunne held out for a long time. He thought to do the Lady Lisle a service by refusing to give evidence that she supplied Hicks and Nelthorp with meat and drink. He therefore swore stoutly that he never had bite or sup in Moyle's Court, and saw nobody else have any: that he supped on "a piece of cake and cheese" that he had brought from home: that he knew not what became of Hicks and Nelthorp after they entered Moyle's Court—it was so dark he saw not where they went.

Then the Lord Chief Justice became satirical.

*Jeffreys*: "Was never a candle there?"

*Dunne*: "No, my lord."

*Jeffreys*: "It was dark, very dark, was it not?"

*Dunne*: "Yes, my lord, it was so."

*Jeffreys*: "Was my lady stirring then?"

*Dunne*: "I did not see her."

*Jeffreys*: "And this is as much as you know of the business?"

*Dunne* (thinking his torture at an end, brightens up): "Yes, my lord, this is all I remember."

But Mr. Dunne was mistaken. His interlocutor continued: "Well, and what hadst thou for all thy pains?"

*Dunne*: "Nothing—but a month's imprisonment."

*Jeffreys*: "Thou seemest to be a man of a great deal of kindness and good-nature. For by this story, there

was a man that thou never sawest before, and because he only had a black beard, and came to thy house, that black beard of his should persuade thee to go twenty-six miles, and give a man half-a-crown out of thy pocket to show thee thy way, and all to carry a message from a man thou never sawest in thy life to a woman whom thou never sawest in thy life neither. That thou shouldest lie out by the way two nights, and upon the Sunday get home, and there meet this same black-bearded little gentleman, and appoint these people to come to thy house upon the Tuesday: and when they came, entertain them three or four hours at thy own house; and go back again so many miles with them, and have no entertainment but a piece of cake and cheese that thou broughtest thyself from home, and have no reward, nor so much as know any of the persons thou didst all this for, is very strange."

This *précis* of his testimony appeared to convince Dunne that he had gone too far; so he said that the little black man promised that Hicks should reward him. Asked why he should take the word of a stranger, he said, "I was forced to take his word at the time." The Chief Justice then induced him to give another reason for his kindness: "They said," the witness testified, "that they were men in debt; and desired to be concealed for awhile."

*Jeffreys*: "Dost thou believe that anyone here believes thee? Prithee, what trade art thou?"

*Dunne*: "My lord, I am a baker by trade."

*Jeffreys*: "And wilt thou bake thy bread at such easy rates? . . . Prithee, tell me, thou dost use to bake on Sundays, dost thou not?"

*Dunne* (a Presbyterian): "No, my lord, I do not!" (with great emphasis).

*Jeffreys*: "Alack-a-day; thou art precise in that." (Then, bending his brows, and in his most terrible roar), "BUT THOU CANST TRAVEL ON SUNDAYS TO LEAD ROGUES INTO LURKING-HOLES! It seems thou hast a particular kindness for a black beard—that is thy reason for undertaking all this trouble" (a pause, during which the witness looked anything but comfortable). "Thou hast told me all the truth, hast thou?"

*Dunne*: "I have, my lord."

*Jeffreys*: "But I assure thee, thy bread is very light weight. It will scarce pass the balance here."

*Dunne*: "I tell the truth, and nothing but the truth."

*Jeffreys* (sarcastically): "No doubt of that! . . . But tell me, whose horse didst thou ride when thou wentest first?"

*Dunne*: "The man's horse that came to me."

*Jeffreys*: "How came he to trust thee with his horse?"

*Dunne*: "The Lord knows, my lord."

*Jeffreys*: "Thou sayest right. The Lord only knows. For by the little I know of thee, I would not trust thee with two pence."

On the second journey, the witness said, he rode his own horse, which he put in Lady Lisle's stable. He could not tell what the other two did with their horses, but believed they left them without the gate. He knew there was searching for rebels at the time; but not near him. Yet he did not ask who Hicks was. Nor, when Hicks and Nelthorp came to his house, did he ask their names, nor for what reason they wished to go to Lady Lisle's. Hicks afterwards told him they were in debt and wished to be concealed. But witness had forgotten his former statement that the "little black man" had told him this when he first came. *Jeffreys* promptly

used this contradiction to confound the witness. "Impudent," "Liar," and so forth were the mildest terms he used—then returning to the charge, he asked, what was done with the horse at Moyle's Court? "I cannot tell, my lord," faltered the witness.

*Jeffreys*: "Why, you impudent rascal, did not you tell me just now they left them at the door? . . . Whom else didst thou see in the house?"

*Dunne*: "I saw nobody at all."

*Jeffreys*: "Then who showed thee the stable, and who helped thee to horse meat?"

*Dunne* (now grown doggedly sullen): "Nobody helped me to horse meat."

*Jeffreys*: "Thy horse did not feed on thy cake and cheese, did he?"

Slowly and sullenly the witness admitted that Carpenter, the bailiff, came and helped him to hay for his horse; that Carpenter brought a candle and lighted him into the house; but swore that he "plucked up the latch of the stable door" and walked in himself; and that in the house he saw no womankind except a small servant girl. The Chief Justice fell into a great rage. He assured the witness, "I never met with a lying, sneaking, canting fellow but I always treasured up vengeance for him"; and then asked, quite suddenly, "Who opened the stable-door, was it Carpenter or you?"

*Dunne* (taken aback): "Carpenter, my lord."

*Jeffreys*: "Thou vile wretch! Didst thou not tell me just now that thou pluckedst up the latch?" Then, falling into a tearing rage, the Chief Justice fell upon the witness. With customary blasphemy, he asked Dunne if he was not afraid that God would immediately strike him into hell!

After a few more unsatisfactory answers, the learned

fury took occasion to make a few general remarks about the Puritans. "It seems," he said, "the saints\* have a certain charter for lying. They may lie and cant and deceive and rebel, and think God Almighty takes no notice of it. . . . What pains is a man at to get the truth out of these fellows!" And a great deal more of the same kind. "See how they can cant, and lie, and snivel, and forswear themselves; and all for the good old cause!" he cried.

Still Dunne stuck obstinately to his story that he went straight from the stable to his chamber; that he had no refreshment supplied to him; and that he saw no one but Carpenter and the girl. Finding him immovable, Jeffreys dismissed him for the time with the benediction, "Thou art a strange, prevaricating, snuffling, shuffling, snivelling, lying rascal"; and Barter, the guide, was called into the box. Barter's chief evidence—given quite willingly—was that when he went on the Saturday with Dunne to Moyle's Court, Dunne told him that, "*my lady asked, whether I knew anything of the concern.*" The reader should remember this. Honest Barter said that he felt so uneasy, he had gone to Penruddock, a colonel of the king's militia, and given information.

The Chief Justice had Dunne put into the box again. After a few preliminaries, he put the question, "Did you not tell him (Barter) that you told my lady, when she asked if he was acquainted with the concern, that he knew nothing of the business?"

Dunne: "My lord, I did tell him so."

Jeffreys: "Did you so? Then you and I must have a

\* "The saints" was the appellation conferred upon the Nonconformist or Puritan party by themselves at first. Afterwards it was applied to them by their opponents as a term of derision.

little further discourse. Come now, tell us, what business was that? And tell it us so that a man may understand and believe that thou dost speak truth."

*Dunne*: "Does your lordship ask what that business was?" (The poor wretch was cudgelling his brains for a likely story.)

*Jeffreys*: "Yes, it is a plain question"—he repeated it—a pause, during which the witness did not speak. "Remember, friend, thou art on thy oath, and it is not merely thy body, but thy soul which is in danger!"—here he repeated the question. Five times, each time prefacing it by a horrible, pious preamble, did Jeffreys repeat the question; and once even waited over seven minutes for an answer; but no answer came. At last he burst out, "Oh! how hard the truth is to come out of a lying Presbyterian knave! Prithee, friend, consider that God is a being of purity, holiness, and truth . . ." and so on, *ad nauseam*. "Thou wretch! All the mountains and hills in the world heaped upon one another will not cover thee from the vengeance of the great God. What hope can there be for such a profligate villain as thou art?"

For nearly an hour the scene continued—the blasphemous bully on the bench trying to extort an answer; the wretched Warminster baker in the box refusing to give one. At length Dunne broke down a little under the strain. He said, "My lady asked me whether I did not know that Hicks was a Nonconformist."

*Jeffreys*: "But that was not my question: What was that business that he did not know?"

*Dunne*: "It was the same thing; whether he knew Hicks to be a Nonconformist."

Now this absolutely agreed with Mrs. Lisle's own story, as the reader will observe. But the Chief

Justice wanted to condemn the prisoner at all hazards. So he railed at him again.

The trial had been going on all day ; and candles had been brought in. "Dost thou think," said Jeffreys, "thou canst banter me with such stuff as this? Hold the candle to his face, that we may see his brazen face."

With this new element of confusion added to the cursing and swearing and bullying of the judge, the witness fairly cried for mercy. "I am so baulked," he exclaimed, "that I know not what I do say. Tell me what you would have me to say, for I am cluttered out of my senses." So, with the candle held near his nose, the poor baker was allowed to stand down until Colonel Penruddock and Carpenter had been called.

Penruddock gave his evidence with marked animus against the prisoner. He aggravated every circumstance of her conduct when he searched the house and apprehended Hicks, Nelthorp, and Dunne, so as to make it appear that she put obstacles in his way. The most damning part of his testimony was, that when he demanded of the prisoner, "Where are the rebels thou art hiding?" she replied, "There is nobody in the house." Further, he said that Hicks, Nelthorp, and the witness Dunne were all concealed. According to the manners of those times, Penruddock's animosity was not surprising ; for his own father had been condemned to death by the prisoner's husband for a political offence under the Commonwealth.

Carpenter, Mrs. Lisle's bailiff, and his wife, were clearly terrified ; and meant to exculpate themselves at any cost. They told how the refugees and Dunne were received by my lady ; how they supped in her presence—Dunne included. And Carpenter was going on with



his revelations, when Dunne, seized with sudden terror, offered to tell the whole truth. Upon this, Jeffreys, with a horrid access of piety, and seeing his victim delivered into his hands, turned up his eyes to heaven, and said that he would pray to the Almighty for Dunne's forgiveness. In fact, the amiable Chief Justice almost shed tears of joy over the repentance of this sinner.

Being now in a plastic state, Dunne admitted that they were all received by Lady Lisle; that she knew who they all were—by name, at any rate; that he and the other two had supper together (the cake and cheese story being utterly abandoned); and, in fact, everything that his tormentor desired him to say. But after a while he recovered himself a little, and would not remember whether, in the prisoner's presence, the two fugitives talked of the late rebellion. At last he said, "There was some talk of fighting; but what, I forget." Upon which, Jeffreys, after assuring him that he would pray for him, but trembled to think that such a wretched creature should live upon the earth, let him go.

There was no further evidence; and the prisoner was told to say what she had to urge for herself.

The sight of that aged figure in the dock would have moved any heart but that of Jeffreys. With great dignity she rose to make her defence. In substance it was this: Dunne had come over to ask her to shelter Hicks, of whom she had heard that he was in trouble for preaching at conventicles. That she did not know Nelthorp was coming; nor, until after the arrest, did she know it was Nelthorp. "As for Mr. Hicks, I did not know him to have been in the army, being a Presbyterian minister, that used to preach and not to fight."

Jeffreys broke in on her: "But I will tell you, there is not one of those lying, snivelling, canting, Presby-

terian rascals, but one way or another had a hand in the late horrid conspiracy and rebellion. . . . Presbyterian hath all manner of villainy in it. . . . Show me a Presbyterian, and I will engage to show you a lying knave."

*Mrs. Lisle:* "My lord, I abhorred both the principles and practices of the late rebellion."

*Jeffreys:* "I am sure you had great reason for it."

*Mrs. Lisle:* "Besides, my lord, I should have been the most ungrateful person living, considering how much I was indebted to the present king for my estate."

*Jeffreys:* "Oh, then! Ungrateful! Ungrateful!"

The prisoner went on to deny her guilt. If she denied Nelthorpe to Colonel Penruddock, it must be remembered that she was in fear of the soldiers. With a great deal of pathos, she concluded her address thus: "I know the king is my sovereign, and I know my duty to him; and if I would have ventured my life for anything, it would have been to serve him. I know it is his due, and I owed all I had in the world to him. But though I could not actually fight for him myself, my son did. He was actually in arms on the king's side in this business. I instructed him always in loyalty, and sent him thither. It was I that bred him up to fight for the king." Here the old lady paused.

*Jeffreys:* "Well! have you done?"

*Mrs. Lisle:* "Yes, my lord."

Then ensued one of the most disgraceful addresses to a jury ever made by a judge. Pious expressions of gratitude to the Almighty for suppressing the rebellion were mixed with horrid imprecations upon the rebels. Epithets were heaped upon the traitors. "Miscreants," "generation of vipers," "lions and ravening wolves," were the mildest of them. The guilt of the prisoner was

assumed from the very outset. The jury were reminded that her late husband had been one of the regicides; and the Chief Justice asked them to see the finger of God in the fact that Colonel Penruddock, whose father had been condemned to death by Lisle, had been able to bring the prisoner to justice. The disgusting harangue concluded with an appeal to jury to remember that "the life of the king, the safety and honour of our religion, and the discharge of our consciences as loyal men, good Christians, and faithful subjects are at stake."

But the jury were not quite ready to sacrifice the aged gentlewoman. One of them asked, as a matter of law, whether she could be convicted of receiving Hicks as a traitor before Hicks had been convicted of treason. Jeffreys replied that she could. Still the twelve good men and true were not satisfied. They retired to the jury room; and were absent for half-an-hour or so, when Jeffreys sent for them. Half threatening, half cajoling them, he told them plainly to find a verdict of guilty. They retired again, and presently came back, for the foreman to say: "We have some doubts upon us, whether there be sufficient proof that she knew Hicks to have been in the army."

*Jeffreys*: "There is full proof as proof can be."

*Foreman*: "My lord, we are in some doubt about it."

*Jeffreys*: (frowning savagely): "I cannot help your doubts! Was there not some discourse of the battle and of the army at supper-time?"

*Foreman*: "But, my lord, we are not satisfied that she had notice that Hicks was in the army."

*Jeffreys*: "I cannot tell what would satisfy you. Did she not inquire of Dunne, whether Hicks was in the army?" (This was a pure invention of the Lord Chief

Justice.) "And when he said he did not know, did she not order him to come by night, by which it is evident she suspected it; and when he and Nelthorp came, discoursed with them about the battle and the army. Come, come, gentlemen, it is a plain proof."

*Foreman*: "My lord, we do not remember that it was proved that she did ask any such question when they were there." The foreman was quite correct. There was no such evidence.

*Jeffreys* (losing his temper): "Sure, you do not remember anything that has passed. Did not Dunne tell you there was such discourse?" (Dunne did nothing of the kind; and the jury looked incredulous.) "But if there were no such proof, the circumstances and management of the thing is as full a proof as can be. I wonder what it is you doubt of."

The jury put their heads together once more, what time *Jeffreys* muttered, loud enough for them to hear, of "traitors," "false jurymen," "hanging," and other expressions calculated to terrify them into the desired verdict. And at last they brought in their verdict. The foreman stood up, and the court hushed. In the old solemn form the Clerk of Arraignment spoke:—

"Alice Lisle, hold up thy hand. Gentlemen of the jury, look upon the prisoner. How say ye? Is she guilty of the treason whereof she stands indicted, or not guilty?"

*Foreman*: "Guilty."

*Clerk*: "Look to her, jailer. She is found guilty of high treason. And prepare yourself to die."

*Jeffreys* proceeded to tell the jury that he agreed with the verdict, adding, in his own emphatically cruel style, "If I had been among you, and she had been my own mother, I should have found her guilty." Can any-

one wonder that Jeffreys was named "the bloody judge," and that his name has been synonymous with inhuman cruelty ever since.

The next day, the aged gentlewoman was placed in the dock with a crowd of others in like case, and was sentenced, "to be conveyed from hence to the place from whence you came, and from thence you are to be drawn on a hurdle to the place of execution, where your body is to be burnt alive until you be dead. And the Lord have mercy on your soul."

Having sentenced the other prisoners, the Chief Justice told Mrs. Lisle that His Majesty had given him a discretion as to the time of the execution of those who were "obstinate and impenitent." Therefore the Sheriff must prepare for her execution that afternoon. But pen, ink, and paper would be given her; and if she employed her time well, a few days' grace might be allowed. The object was to extract a confession; and some information as to other offenders. The brutality of this proceeding exceeds anything in our judicial annals.

But the clergy of Winchester remonstrated so forcibly with the Chief Justice as to put him off the immediate execution, and give four days' grace. Meanwhile a petition was sent to King James. That gracious monarch was pleased to remit the burning, and allow the prisoner the favour of being beheaded—a sentence which was carried out in Winchester market-place amid the groans and tears and execrations of the people.

Nothing, of all the inhumanities practised in this reign, made a deeper impression on the popular mind than the trial and execution of Alice Lisle; and Parliament subsequently reversed the conviction. But I am bound to say that apart from the cruelty of even trying, much more executing, an old lady of seventy on such a

charge, I cannot see what other conclusion could be come to than that Mrs. Lisle did harbour Hicks well knowing him to be a fugitive rebel. The point of law, that an accessory after the fact can only be found guilty after the principal criminal has been found guilty, is another matter. Still, if the admitted facts are looked at with impartial eyes, it will be seen that on those facts the accused had very little defence to make.

She knew there had been a rebellion: that fugitive rebels were lurking everywhere: that Hicks was asking to be concealed: that he, at any rate, was a partisan of the side that had rebelled and been defeated. She never asked, according to her own story, why this man was in such danger as to desire concealment. Why not? Was it because she suspected, only too truly, the real reason? If not, again I ask, why did she not inquire? Was it so that she should be able to say, by the card, that she did not know?

Again, when Penruddock appeared, and accused her of having rebels concealed in the house, why did she deny *in toto* that anybody was there? She did not merely say, "There are *no rebels* here," as she well might have said. She said, "There is *nobody* here." It is impossible, in my judgment, to resist the conclusion that the unfortunate woman either knew, or wilfully shut her eyes to the fact, that Hicks was a fugitive from Monmouth's army.

But, however that may be, the trial of Alice Lisle was conducted as no trial will ever again be conducted in Great Britain. Jeffreys was the last of his race. Judges no longer hold themselves to be bloodhounds to hunt down traitors; and if any such did appear, one has confidence that the Bar would rise as one man, and assert the dignity and the purity of British justice.

## VI.

### A COLD-BLOODED VILLAIN.

#### *The Trial of Dr. Pritchard.*

MURDER is never justifiable, rarely excusable, always regrettable. Most people, when they have said "Murderer!" think they have uttered the last word of reproach. But there are degrees of guilt and of infamy. There is murder by duelling—bad enough, in all conscience—unchristian enough, in all conscience. There is murder by the man who, in a drunken fit, lifts knife or bludgeon. There is murder by him who, with wrong, real or imaginary, to avenge, finally steels himself to lie in wait for his oppressor. There is murder by him who, caught in the commission of crime, chooses rather to stain his hands and soul with blood than to spend years in the devastating horrors of penal servitude. There is murder by the robber, who, intending but to stun or silence his victim, strikes too heavy a blow, or squeezes the throat too hard.

All these are bad enough; and so long as there is capital punishment meted out to any crime, to this crime it must be meted out. So long as the execration of the human race may lawfully vent itself on any erring member of the species, so long the murderer must be held up to execration and loathing.

But there is one species of murder so treacherous and so terrible that to be charged with it is enough to

cause everybody to shrink back in horror from the accused. Call a man "Murderer!" and you will find someone in the crowd to pity him: to wonder what provocation he had: what temptation: what circumstances of birth and education led the man on from crime to crime. But call a man "Poisoner!" and you shall find every face assume an expression of disgust and loathing—not unmixed with terror.

For the murderer by pistol, knife, or bludgeon is an assailant more or less open. You may see him coming. You may flee from him, and escape the doom he intends for you. Or you may resist, and foil his deadly purpose. But the poisoner kills by stealth. From the very nature of his crime, he is someone with whom you have domestic relations. He is, sometimes, a medical attendant, as Palmer was to Cook; or a brother, as Palmer was to another of his victims; or a husband, as was Dove of Leeds; and as was Pritchard, of Glasgow, whose case we shall now consider. He administers death in food, in drink, in medicine. And the crime he commits is done so secretly, so insidiously that discovery is difficult. For all these reasons, a poisoner is regarded as pre-eminently the foe of the human race; and few there be who would say that any punishment can be too great for him.

The case now under consideration presents some curious features. Its cold-bloodedness is, fortunately, such as has rarely been met with. The hypocrisy of the criminal, again, is almost beyond belief. And, above all, there has rarely been a case of double murder where, as in this case, the accusers have been unable to point out anything like an adequate or even a strong motive for the crime.



Let me begin by reminding the reader of the properties and qualities of the poison called antimony.

Antimony is a poison frequently met with and easily procured. As a rule, it is administered in the form of tartar emetic—a very valuable medicine which contains about 35 per cent. of antimony. Doctors use tartar emetic to cause vomiting and purging. According to the editor of "Taylor's Medical Jurisprudence" (5th edition) as little as 2 grains has been fatal to an adult; but very much larger doses have been swallowed without fatal results. Indeed, so uncertain is the action of a large quantity taken at one time that antimonial poisoners generally adopt the method of giving poisonous but not fatal doses at short intervals.

The symptoms of poisoning by antimony are very similar to those of acute gastro-intestinal inflammation. There is a burning pain all down the alimentary canal from mouth to stomach; profuse vomiting; diarrhoea; feeble, quick pulse; shivering; clammy skin; and frequently, as the fatal end draws near, spasms which are sometimes clonic and sometimes tetanic.\* The result is that the sufferer becomes completely worn out by continued vomiting, purging, and convulsions; and finally dies of exhaustion. Occasionally the pain is so great that the patient screams for very agony.

As the most obvious symptom—vomiting—is one that often arises from disease, death from antimony poisoning is not readily suspected. Palmer killed his wife and his brother by this drug; and would never have been detected if it had not been for the death of Cook. For this reason, probably, Dr. Pritchard resolved to resort to antimony when he began to practise upon the life of his wife.

\* See the case of Palmer, p. 149.

Edward William Pritchard was a surgeon in Glasgow—a man of considerable attainments and good standing. He had practised his profession with some success in the city on the Clyde for about four years (1859-1863) when an event happened which somewhat injured him in the eyes of his neighbours. A fire broke out at Dr. Pritchard's house; and so rapid was its progress that a maidservant was unable to escape, and was burnt to death. The house was insured; but the insurance company professed not to be satisfied that the fire was accidental, and declined to pay. Investigation proved that at this time the doctor was in rather low water.

In the following year (1864) Mrs. Pritchard fell ill. Since her marriage in 1856 she had never been robust; but in October, 1864, she became positively ill. She turned excessively pale; she vomited and retched in a most distressing manner; and she felt so exhausted that she was obliged to take to her bed for days at a time. Early in December, however, she took a turn for the better; and was able to go away to her mother's, at Edinburgh, for rest and recuperation. The change seemed beneficial; for when she returned, at about Christmas, the patient was better and stronger.

But she had not been long at home when her symptoms returned. She vomited constantly. And on the 1st of February (1865), after a violent fit of sickness, the unfortunate lady suffered a most agonising attack of cramp. A relative of hers, a medical man, saw her; and agreed with Pritchard's suggestion that it was gastric fever. He prescribed a little champagne. Mrs. Pritchard seemed, for a day or two, to find slight relief from the treatment, but on the 8th of February the poor woman was racked again by violent sickness and cramp.

She asked for a friend, Dr. Gairdner, to be summoned ; and he was called in. Now the husband had been telling all inquiring friends that his wife was suffering from gastric fever ; but when Gairdner diagnosed the case, though he found plenty of gastric trouble, he could discover no symptom of fever whatever. As the patient did not improve, and seemed much depressed in spirits, her mother was sent for. A vigorous old lady of seventy was Mrs. Taylor, with no ailment except an occasional bad headache, for which she was in the habit of taking a well-known opiate—Battley's solution. Thereby hangs a tale.

Pritchard had been, to all appearances, devoted in his attendance upon his sick wife. He was worn out with want of rest and sleep. And he welcomed his mother-in-law with effusive gratitude. The latter, poor creature, seems to have been very proud and fond of her son-in-law. He had always been a favourite with her. Indeed, Pritchard seems to have been one of those men whom many women liked ; and whom most men—of his own class, at any rate—felt an aversion for. In person, he was a tall, well-made man, full-bearded, with a benevolent cast of countenance, and a sweet smile. His manners were ingratiating. Men suspected him of drawing the long bow when he described his travels and his scientific researches ; but the women were not so critical ; and Mrs. Taylor and her daughter, at all events, appear to have taken him at face value, and were devoted to him. To his two children he was the kindest of fathers ; and when they were at their grandmother's he would write them letters full of paternal affection, and of godly counsel. If one did not know what the man was, one would be inclined to say, "Here is a man whose strong point is his love for his domestic circle."

Mrs. Taylor arrived in Sauchiehall Street on the 10th of February, and entered on the task of nursing her daughter. At that time there were in the house two servants—Catherine Lattimer, cook, and Mary M'Leod, housemaid; two children—a girl, aged fourteen, and a boy, aged eleven; and two boarders, medical students. Lattimer left on the 16th of February, and was succeeded as cook by Mary Patterson.

After Mrs. Taylor had been there three days, an incident occurred which fixed itself in the minds of everybody in the house. Mrs. Pritchard expressed a desire for some tapioca. The little boy was sent to buy half a pound; and when he brought it he placed the bag on the hall table, where it lay for a while before somebody took it down to the kitchen. Catherine Lattimer made half-a-cupful, and it was carried to the dining-room by Mary M'Leod. Mrs. Pritchard appears to have eaten a spoonful or so, and Mrs. Taylor ate the rest. The elder lady immediately turned sick, retched, and vomited.

About the same time, Mrs. Taylor sent Mary M'Leod out to a chemist's for a bottle of Battley's mixture.

From the 10th to the 24th of February, Mrs. Pritchard's health in no way improved. Her mother expressed great anxiety about her, and said to Catherine Lattimer (for the old servant, though she had left the service, continued to call at the house to inquire after her former mistress's health) that she could not understand Mrs. Pritchard's illness: "she seems one day better and two days worse." On the 24th, the mother had tea with Dr. Pritchard and the children at seven o'clock, after which she wrote letters for a while. She walked upstairs to the sickroom, and in a few minutes the servants were startled by a violent ringing of the

bell. They rushed up to find Mrs. Taylor sitting on a chair, retching violently, but not vomiting. The cook (Mary Patterson) ran down for hot water, which Mrs. Taylor drank to make her vomit; but it was ineffectual. Mrs. Pritchard, haggard and terrified, was sitting up in bed. "Fetch the doctor," she said. Now Dr. Pritchard was in the consulting room at the time, engaged with a patient. He finished his consultation, and walked upstairs. By this time, Mrs. Taylor was unconscious, sitting with her head hanging down on her breast. Pritchard examined her, and then asked one of the boarders to run for Dr. Paterson, a practitioner who also resided in Sauchiehall Street. Paterson was soon on the scene. He was met in the lobby by Pritchard, who took him into the consulting room and told him that his mother-in-law had been writing letters in that room, when she was seized with an epileptic fit and had to be carried upstairs. "My wife and she had some beer—Bass's or Allsopp's—for supper, and it made them both sick. The old lady is in the habit of taking a drop." He also added, "My poor wife has been ill for a long time with gastric fever."

The reader is invited to observe that the whole of this statement was false. It was meant to deceive Paterson, and to "make evidence," if necessary, in the speaker's favour. As is usual in such cases, however, it failed in both objects. Paterson had a strong antipathy to his brother practitioner—why, I do not know; but he obviously had. And when he went upstairs and saw the patient he at once formed the opinion, and expressed it, that Mrs. Taylor was under the influence of some powerful narcotic. "Ah!" said Pritchard, "she is in the habit of taking Battley's Solution. Very likely she has had a good swig at it." As Paterson pursued his examina-

tion, Pritchard patted Mrs. Taylor on the shoulder, and remarked, in a soothing voice, "You are getting better, darling." "Never in this world!" exclaimed Paterson.

Just at that moment, Dr. Paterson's eye caught Mrs. Pritchard's face. She was, very naturally, in great distress. But the experienced eye of the medical man saw there something more than grief. He saw something more than normal illness. His brain jumped to the conclusion that she, too, was being poisoned. And he found himself repeating in his mind the dread word "Antimony."

But he said nothing. Of that, more in its proper place. He merely observed to Pritchard that the case of Mrs. Taylor was, in his opinion, hopeless; but that, as a last resort, they might try mustard poultices to the soles of the feet, the calves of the legs, and the inside of the thighs, and administer a strong enema. These remedies were applied; but to no purpose. There was a slight fit of retching; then something like coma; and laboured breathing. Paterson gave up the case as hopeless. He went downstairs, followed by Pritchard. Again Paterson expressed the opinion that the patient was suffering from narcotism. Again Pritchard told him of the Battley's Solution. After which, much perturbed in mind, Dr. Paterson went home (11.30 p.m.). He was sent for about 1 a.m. of the 25th, but did not go. Instead, he sent word that if Dr. Pritchard really thought he could do any good, he would step over; and in that case Dr. Pritchard was to send word. But no word was sent; and, soon after one o'clock, Mrs. Taylor died.

The women who laid out the body found in the dead woman's pocket her bottle of Battley's Solution, almost

half empty. "Good heavens!" cried Pritchard, when Mary M'Leod brought him the bottle, "has she taken all this?" And he told Mary to say nothing about the bottle to anyone, as it would not look well if anyone found it in his house.

After her mother's death, Mrs. Pritchard grew weaker and more ill. The sight of her mother dying under her very eyes was not calculated to improve either her health or her spirits. Dr. Pritchard had his wife removed to a room downstairs, and himself once more undertook the office of night nurse.

On the 1st of March, Mrs. Taylor was buried. Pritchard had sent his father-in-law to Dr. Paterson for a death-certificate; but Paterson replied that such certificates were not usually given to the friends of the deceased, but to the District Registrar. The District Registrar, on Pritchard's instructions, sent to Paterson a form of certificate, with a request to him to fill it in; but Paterson absolutely refused, and wrote the following letter to the Registrar:—

"I am surprised that I am called on to certify *the cause of death* in this case. I only saw the person for a few minutes a very short period before her death. She seemed to be under some narcotic, but Dr. Pritchard, who was present from the first moment of the illness until death occurred, and which happened in his own house, may certify the cause. The death was certainly sudden, unexpected, and to me mysterious."

It was, I venture to say, equally mysterious that the Registrar took no notice of this letter. To the ordinary mind, when a death is declared by a medical man to have been sudden, unexpected, and to him mysterious, there is at once grave cause for inquiry. And not the less when that medical man refuses to certify the cause

of death at the request of a professional brother. Having written this letter, Dr. Paterson thought he had done all he was required to do.

On the day before the funeral, Paterson met Pritchard in the street. "I am going to Edinburgh to-morrow," said Pritchard, "to attend the funeral of my poor mother-in-law; and I shall feel obliged if you will look in and see Mrs. Pritchard at eleven o'clock. The other at once agreed to do so. He accordingly called, and saw the unfortunate lady alone. "She told me," Dr. Paterson said in his evidence, "that for a considerable time past she had suffered from sickness, vomiting, and retching, with severe pains in the stomach and bowels, accompanied with purgings, great heat, and uneasiness about the mouth and throat and a constant, urgent thirst." The tongue was very foul; the face flushed; the pulse weak and rapid. Altogether, she appeared to be in a severe state of prostration. Paterson recommended small quantities, at frequent intervals, of champagne, brandy, and ice; and of such foods as calves-foot jelly, beef-tea, and chicken broth. He also wrote a prescription for a mixture calculated to allay the biliary disturbance, and soothe the internal mucous membrane. I do not know whether Mrs. Pritchard ever had these powders.

For about ten days after Paterson's visit, nothing seems to have happened that could be laid hold of. But on the 13th of March occurred one of the incidents that made a deep impression on the mind of the jury who afterwards tried the case. That evening, Mary M'Leod took her mistress's supper upstairs; and, amongst other things, a piece of cheese. This piece of cheese was cut off a large piece that was on the supper table, at which Pritchard and the two boarders were having their even-



ing meal. Nobody saw anything done to the cheese. As soon as Mrs. Pritchard tasted it, however, she asked Mary M'Leod to taste it also. The girl did, and felt a taste "like pepper"—a burning in the throat, followed by a dreadful thirst. Needless to say, neither mistress nor maid ate any more. Mary M'Leod cleared away the tray, and bore it down to the kitchen. Curiously enough, she said nothing to Mary, the cook, about her experience; and the next morning, the cook, seeing the cheese lying there, took a bite. She became sick at once, and vomited so much that she had to go to bed.

Two days after the cheese incident, another occurred, no less significant. Mary Patterson made some egg-flip for Mrs. Pritchard. Now the sugar was kept in the dining-room, and while the cook was beating up the eggs in a tumbler, her master said he would fetch the sugar. She heard him go to the dining-room, thence to the consulting room, from which he presently came into the kitchen with two lumps of sugar. These he dropped into the tumbler. Having mixed the flip, the cook tasted it and sent it upstairs by Mary M'Leod. No sooner had Mrs. Pritchard swallowed a glassful of the mixture than she vomited violently; and when M'Leod returned to the kitchen she found the cook also very sick, and in great pain.

Two days after this (March 17th) the end came. In the afternoon, Mary Patterson went up to the sick-room, and saw her master administering a drink to his sick wife. At five o'clock, Mrs. Pritchard had a severe attack of cramp, and her condition appeared to be so alarming that Dr. Paterson was called in by Pritchard himself. He came about eight o'clock. This is his description: "She was sitting up in bed, supported by

pillows. . . . There was a peculiarly wild expression ; the eyes were fiery red and sunken. Her cheeks were hollow, sharp, pinched-looking, and much flushed. Her pulse was weak and exceedingly rapid. Her tongue was of a darkish brown colour, very foul ; and she began to grasp with her hand, as if to catch at some imaginary object on the bed-clothes." On Pritchard's statement that the patient had not slept for four or five nights, Dr. Paterson wrote out a prescription for a sleeping draught (morpbia, ipecacuanha and chlorodyne). Pritchard said, "I will send it out to be made up. I don't keep any drugs in the house except chloroform and Battley."

An hour after midnight the poor sufferer died. Mary M'Leod and Mary Patterson, who were present when this occurred, were astounded by the vehemence of the bereaved husband's grief. He wept. "Come back to your dear Edward!" he cried ; and, hanging over the corpse, he used every endearing epithet to his "dear Mary Jane." And, some time later in the day, he made in his diary the entry :

"At 1 a.m. Mary Jane, my Beloved, passed away."

In another diary he wrote : "Died here at 1 a.m., Mary Jane, my own beloved wife, aged thirty-eight years—no torment surrounded her bedside—but, like a calm and peaceful lamb of God, passed Minnie away. May God and Jesus, Holy Ghost, One in Three, welcome Minnie. Prayer on prayer till mine be o'er. Everlasting love. Save us, Lord, for Thy dear Son."

I am endeavouring to record the facts in a manner as colourless as possible ; but it is difficult to repress an exclamation of disgust at the blasphemy of this hypocrite.

The 18th of March was a Saturday. On the Mon-

day (20th) Pritchard sent in a certificate of cause of death to the Registrar at Glasgow: "Cause of death: *gastric fever*. Duration of illness: *two months*." On the same day he accompanied the body to Edinburgh; for the deceased lady had desired to be buried beside her mother there. And again we are brought face to face with an exhibition of calm hypocrisy that staggers the mind. The coffin being opened in the presence of Mr. Taylor and other relatives of the deceased, Pritchard, his eyes streaming, kissed the dead woman on the lips. It makes one wonder that the body did not, according to the old superstition, bleed at the touch.

But the murderer had reached the end of his tether. On the 20th of March, the procurator-fiscal of Glasgow (an officer corresponding almost to the public prosecutor in England) received the following letter:—

"Glasgow, March 18th, 1865.

"SIR,—Dr. Pritchard's mother-in-law died suddenly and unexpectedly about three weeks ago in his house, Sauchiehall Street, Glasgow, under circumstances at least very suspicious. His wife died to-day also suddenly and unexpectedly, and under circumstances equally suspicious. We think it right to draw your attention to the above as the proper person to take action in the matter and see justice done.—Yours etc., "AMOR JUSTITIÆ."

The procurator-fiscal acted with the greatest promptitude. The case was put into the hands of Mr. M'Call, a superintendent of the Glasgow police, and this gentleman visited the Registrar of Deaths, and soon discovered that the two women had died, and their deaths had been certified by Dr. Pritchard. M'Call also made a few other inquiries of local druggists, and from the servants in the

house, and, learning from the latter the train by which their master was to return from Edinburgh, the officer waited for him at Queen Street station, and arrested him on the platform.

Here let me say a word as to the anonymous letter. It was, at the time, supposed to have been written by Dr. Paterson; but that gentleman strongly denied the authorship. The supposition was based on three facts: (1) that Paterson was acquainted with the facts; (2) that he, on his own statement, had come to the conclusion that Mrs. Taylor had been poisoned, and that Mrs. Pritchard was "under the depressing influence of anti-mony"; and (3) that he was hostile to Pritchard. That he should deny the authorship, even if he wrote the letter, was not surprising; for the human mind is so curiously constituted that nobody cares to be accused of giving anonymous information to the police. On the other hand, it is a strong thing to ask one to disbelieve Paterson's word. Moreover, the obvious theory is usually the wrong one. In this world, the obvious rarely happens.

I am inclined to take a different view. The letter was in the handwriting of a man. Obviously, also, it was written by a man of education—the composition, the Latin signature, reveal this. Again, the writer must have been on the spot when both deaths occurred, and was somebody with a certain amount of medical observation. I invite the reader to look at the phrase, "*We* think it right to draw your attention," etc. Now "*we*" is not an expression that would come naturally to the pen of anybody except a journalist or (perhaps) a clergyman, when the writer was writing, and thinking, of himself. It would, on the other hand, come naturally if the letter, though penned by one hand, was composed by

two or more people in consultation. I ask the question:—Did the two resident medical students put their heads together over the tragic events that had happened in the household; and not caring to give verbal information to the police, write the “Amor Justitiæ” letter? “Amor Justitiæ” is just such a signature as one might expect to find adopted by medical (or other) students.

This theory may be totally ill-founded, but it seems to me as consistent with known facts as the other, and in any case it suggests nothing to the discredit of the persons concerned. “Amor Justitiæ,” indeed, be it one person or more, rendered a substantial service to justice and to mankind.

After the arrest, events moved rapidly. On the 20th of March, a search of the prisoner's house revealed Mrs. Taylor's unfinished bottle of Battley's Solution, a considerable quantity of tartar emetic, and some phials of aconite—also other phials formerly containing aconite. On a further search, the remainder of the tapioca was found in a bag in the kitchen cupboard. The labels on the phials and packets put the police in the right way to trace the prisoner's purchases of drugs; and it was found, on inquiry at several druggists' shops, that Dr. Pritchard had, during the preceding nine months, bought large quantities of antimony and tincture of aconite. The last-named drug he had, towards the end, generally purchased in the form of Fleming's Tincture—much stronger than the form in which aconite is usually sold.

On the 22nd of March, Pritchard was brought before Sir Archibald Alison, Sheriff of Lanarkshire, and examined on the charge of murdering his wife. On the same day a *post-mortem* examination of the body was made in Edinburgh, and the suspicions against the

prisoner were confirmed to some extent, for the surgeons found no trace of disease to which death might have been due. Parts of the body were sent for chemical analysis. The result of this was to prove the presence of antimony in every one of the parts analysed.

Next (March 28th) Mrs. Taylor's remains were exhumed and examined surgically and chemically, with the same result as in the case of her daughter. Pritchard was, accordingly, charged with murdering this lady also.

In both cases, before the Sheriff, the prisoner preserved an appearance of great coolness, and stoutly denied his guilt.

It was three months after (viz. Monday, July 3rd, 1865) when Edward William Pritchard found himself in the dock, before the High Court of Justiciary, in the Parliament House, Edinburgh, to stand his trial on the double charge of murder. The Court consisted of three judges, the Lord Justice-Clerk, Lord Ardmillan, and Lord Jerviswoode. The president, Lord Justice-Clerk, was the same Inglis who had defended Madeleine Smith; and a better judge no man could wish for. Indeed, he was so eminent on the bench, that he overshadowed, as his fame still overshadows, the whole Scots judiciary of the nineteenth century. He occupied, as a lawyer, the same standing as Mr. Justice Willes did in England at that time—one who could go to the very heart and the very root principles of the case.

The Solicitor-General, Young (afterwards a distinguished judge), led for the prosecution; and the defence was in the hands of Rutherford Clark and Watson. Such names were a sufficient warranty that justice would be likely to have her due; and that the prisoner would lack no protection that forensic skill, eloquence and learning could afford.

I have said that the prisoner was charged with the two murders. To an English lawyer it seems a little strange that an accused should be put on his trial for two crimes at once; nor was it allowed to go unchallenged here. Mr. Watson argued, with much learning and skill, that "the panel" (as the Scots law terms the prisoner) ought only to be called upon to meet one charge at a time. The Solicitor-General replied that the two charges were inseparable parts of the same story, and ought to be tried together. To this Mr. Rutherford Clark answered that there was great danger that the jury might be led astray by the fact of two charges.

The judges disallowed the objection; and I confess I am unable to see why they did so. The first principle of British criminal jurisprudence is that nothing should be allowed to prejudice a prisoner. He may appeal to prejudice and sentiment in his defence; but the prosecution must be tied down to proving his crime strictly. And I cannot but be of opinion—no one could who has had experience of juries—that the mere fact of a person being accused of poisoning two people, one after the other, would be highly likely to prejudice the jury against the accused. They might convict him of both crimes; when they might, if he were charged and tried on separate indictments, acquit him of each of them. The fact that Pritchard was a crafty, vicious, and dangerous criminal makes no difference. And while I do not dispute the legality of a ruling by Inglis, the criticism must be made that, as the Court had a discretion to separate the charges, it would have been fairer to the prisoner to do so. And fairness to a prisoner always serves the ends of justice.

The evidence was conclusive that both the deceased

women had died of antimonial poisoning. Not a doctor could be called for the defence to offer an alternative theory. The remains of the tapioca had been found saturated with antimony. The incidents of the tapioca pudding, the cheese, the egg-flip, all made it certain that the drug had been administered by someone in the house. And at last the defence were driven to propound the theory that it might have been Mary M'Leod.

The scene on the examination of this witness was most painful. After some hesitation, she confessed that she had lived in the house for a long time on terms of immoral relations with her master; that he had induced a miscarriage; and that he had said he would marry her if she survived his wife.

She was the person who carried up to the sick-room the tapioca, the cheese, and the egg-flip. And she was not asked if she had tampered with any of these things. Not being asked, she did not, of course, say anything on the subject.

Dr. Paterson had a very bad experience. He was severely questioned as to his alleged belief that Mrs. Taylor died of poison, and that Mrs. Pritchard was being poisoned on February the 24th. If he thought this, why had he not gone to the police, or taken some other step, at any rate, to prevent the consummation of the second murder? The doctor's answer was, to say the least of it, astounding. It would, he said, have been a breach of professional etiquette!

An attempt was made to move the sympathies of the jury by putting the prisoner's two children into the box to prove the tender and affectionate relations of their father and mother. Rutherford Clark made a gallant effort in his speech to the jury to insinuate that, assuming the guilt to lie on someone in the house, there



was as much evidence against Mary M'Leod as against Pritchard. But the chain of proof was too strong. In contrast to the great case of Madeleine Smith, where there was plenty of motive but a weakness in the proof, here there was not much motive, but no weakness in the proof.

Only one verdict was possible, and after that verdict only one sentence. Pritchard was hanged in Glasgow—the last person to be hanged in public in that city. Before he died he made confession of his guilt—a most hypocritical document. There was not the least public sympathy or pity for him—indeed, his was almost the only case I know of where nobody so much as tried to get up a petition for remission of the capital punishment.

I said at the outset that one of the peculiar features of the case was the absence of motive. It is true the prosecution did suggest a motive, or, rather, two motives; but the case they made was so feeble as hardly to be worth mentioning. The first was the Mary M'Leod motive. I venture to dismiss this, because it was clear that it was only a vulgar intrigue. Pritchard had had his will of Mary M'Leod. It was not like a case of a strong passion, where the woman had refused to assent to the wishes of her lover except under the cover of marriage; and where he had been carried away by his desires to remove the obstacles to his union with her. I do not believe for a moment that Pritchard would have married Mary M'Leod under any circumstances.

The second was pecuniary. Pritchard was in debt to his bank and an insurance company to the extent of just over £300. The debts were not pressing; and, indeed, one of them (£255), owing to the insurance office, would never, probably, have been called in. Mrs. Taylor

had given him £500, which he had agreed to treat as a settlement on his wife and children ; so that his mother-in-law's death would not benefit him in respect of that sum. Mrs. Taylor had also made a will, in which she left two-thirds of her property (about £2,000) in trust to pay the life-rent to her daughter. If Mrs. Pritchard died before her husband, the interest was to be paid to him for the benefit of the children until they attained twenty-one ; and after that to be paid to Dr. Pritchard. So that the death of Mrs. Pritchard and Mrs. Taylor would not benefit him until the children attained twenty-one. Besides, there was not a tittle of evidence that he knew the contents of this will.

My own impression is that Pritchard was tired of his wife ; and had determined to get rid of her merely for that reason. He was a lustful man—possibly he contemplated another marriage ; though not with Mary M'Leod. The poisoning of Mrs. Taylor was, apparently, merely an incident. She was hindering him in his other foul work. But this is merely conjecture. In any case, it is difficult for the person of normal mind to conceive the mental attitude, the total stifling of conscience, that would lead an educated man to murder in cold blood two estimable women whose only fault seems to have been that they were dotingly fond of the hypocritical scoundrel who tortured them to death.

## VII.

### A FALSE WITNESS.

#### *The Case of the Bishop of Rochester.*

AFTER the Revolution, called, by the Whigs, "great and glorious," of 1688, for a long time the ruling powers of Great Britain lived in fear of a counter-revolution. And as nothing is more true than that fear breeds suspicion, so it befell that for years the air was full of rumours and suspicions of plots for the restoration of the exiles. There were such plots in existence, without a doubt; though by no means in such numbers or to such a formidable extent as the Government feared. The continual suspicion brought about the evil of espionage. He who carried to my Lords of the Council information of a Stuart plot was sure of a reward; and the base trade of the spy flourished exceedingly. By far the worst part of the evil of spying is that a spy who cannot discover a plot, not infrequently invents one; and in an age of general suspicion, or at a time of great public alarm, stories are swallowed at a gulp that would not endure the mastication accorded to such accusations in less troubled periods. Here, reader, is an account of that which happened to the right reverend father in God, Thomas Sprat, Bishop of Rochester.

In the year 1692 a bishop was a bishop. He always wore a full-bottomed wig. He drove abroad in a carriage and four, with a couple of footmen hanging on

behind. His revenues were, in most cases, of princely dimensions. And, to speak generally, he maintained a state and style equal to the wealthiest of the nobility.

Thomas Sprat had been appointed Bishop of Rochester by James II., and had tried to serve that monarch's projects by forming one of a commission appointed by James to bring about a union of the churches. After the Revolution, his lordship of Rochester accepted the situation and took the oath of allegiance to William and Mary. It is to be observed that of those Seven Bishops who had so stoutly resisted James II. in the days of his power and prosperity, only two deserted him in the days of his adversity. Dr. Sprat, as he had not the courage to resist James, was equally complaisant to William of Orange. Still, there were not wanting those who thought that the Bishop of Rochester would not be displeased to return to his old allegiance. One of his eyes, his enemies said, was always looking towards St. Germain.

It was the first Saturday evening in May, 1692. The bishop's palace at Bromley, in Kent, was quiet and peaceful. My lord was walking in the orchard, among the cherry blossom, seeking inspiration for the sermon to be preached on the morrow. Suddenly the episcopal meditations were interrupted. The noise of wheels was heard. A carriage, drawn by four horses, dashed up the road, stopped at the gate, and two people alighted. The bishop wondered what friends these could be, who should pay him a visit at this hour. He hurried to meet them. But when he did meet them, in the courtyard of the palace, he perceived them to be strangers.

One of the men advanced a pace or two and bowed profoundly. "My lord," he said, "perhaps your lord-

ship does not know me. My name is Dyves. I am Clerk of the Council, and here is one of the king's messengers." The bishop started. "I am sorry I am sent on this errand," continued Dyves, "but I am come to arrest you on suspicion of high treason!" Well might the bishop's face turn pale, and the bishop's knees tremble. For in those suspicious times there was very little between accusation and condemnation.

Frightened though he was, the bishop remembered that he was an Englishman, and could not be arrested without legal warrant. "Sir," he said, "I suppose you have a warrant for so doing. I pray you let me see it." With another profound bow the Clerk of the Council produced a warrant signed by several Lords of the Council—amongst others by Lord Nottingham, whose handwriting the bishop recognised. The short time taken up by these formalities enabled the bishop to collect his wits; and when it was quite cool there was no quicker-working brain in England than that of the Lord Bishop of Rochester.

He saw at once that his only safety lay in meeting the accusation half-way. "What are your orders how to dispose of me?" he inquired. "My lord," replied Dyves, "I must first search your person, and demand the keys you have about you." The prisoner promptly complied by handing over his keys, and submitting to have his pockets searched. Even an innocent man is inclined to rebel against a search of his person—there is something so humiliating in the turning out of pockets. But the bishop came well out of it, except for the indignity. The only papers found on him were an innocent business letter, and the notes of the sermon upon which he was meditating in the cherry orchard.

Next, the clerk and the messenger demanded to be

shown the drawers and desks where papers were kept. They turned out the episcopal study with scant ceremony. When they came to a large bundle of sermons, the prisoner politely observed, "Those are my sermons. I think you will not find any treason in them. But you may read them all." Somehow the officers of justice did not seem anxious to do this. Dyves left the sermons where he found them; but sealed up and carried away every letter he could find.

After this, the pair searched almost every room. In the bishop's bedroom and dressing-closet they closely scrutinised the bed hangings and bedclothes; and they knocked on the wainscot to see if there might be a secret room or hole. They found nothing here. Downstairs, they left not an inch of the prisoner's parlour and drawing-room unscanned, and they searched the hall with a care that made the bishop smile. When he found the king's messenger putting his hand into every flower-pot, what time the Clerk to the Council groped about in the chimneys, he fairly laughed at them. The chimneys were, of course, likely hiding-places for treasonable papers; but the flower-pots——!

The search concluded, and such papers as had been found in the rooms having been duly tied up and sealed, the bishop was requested to prepare for a journey to London. This, perforce, he had to do, not in his own stately equipage, but in the carriage brought down by his captors. They arrived at Whitehall at about ten o'clock at night; and proceeded forthwith to the Home Office, where Lord Nottingham, Secretary of State, was awaiting them. The bishop had made up his mind what line to take, and promptly opened on the Earl: "My lord, I have come upon your warrant. But certainly there must be some black villainy somewhere, or some great

mistake in this business ; for I am absolutely free from any just accusation."

"I own, my lord," replied Lord Nottingham, "that I was much surprised when I heard your lordship's name mentioned."

"Then I entreat you, my good lord, to let me be examined to-night, if any witness can be produced against me. I would not willingly lie under an accusation of treason."

But such a course proved to be impossible. The Cabinet Council had separated and dispersed for the day ; but the next day they were to meet again, and the matter should be inquired into. As a favour, instead of being committed to the Tower, the bishop was allowed to go to his town house—the deanery of Westminster. For my lord bishop was a pluralist, being Dean of Westminster as well as Bishop of Rochester. So to Westminster the prisoner was escorted by Mr. Dyves and the messenger, and a guard of soldiers was set about the house to prevent escape.

Next day (Sunday) Dyves appeared again, and searched the deanery, as he had searched the house at Bromley, for papers. Every drawer was turned out, and every book in the library examined ; but nothing was found of traitorous import. Later in the day, the accused was escorted to the Home Office, in Whitehall, where he found assembled seven Lords of the Council—the Earl of Nottingham presiding. Hardly had the bishop entered the room than he was addressed by Lord Nottingham : "My lord, you cannot but think it must be some extraordinary occasion which has forced us to send for you hither in this manner."

"I submit to the necessities of state, my lord, in such a time of jealousy and danger as this is."

"My lord, I am to ask you some questions, to which we desire your plain and true answers."

Now the Bishop of Rochester was not bound to answer questions in this manner. The law of England was then, as it is now, that he who is accused is entitled to know of what he is accused, and to demand that his accusers shall prove, before the proper tribunal, the charge. But for many generations the Privy Council had been accustomed to cause to be brought before them great offenders in matters of state, and to interrogate them in the strictest manner—an inquisitorial method of procedure carried to its extreme height by the Star Chamber and the Court of High Commission in the Tudor and Stuart times. All England hated such proceedings; but although Parliament had abolished the Star Chamber and the High Commission Court, it had not been able to stop these irregular investigations by the Lords of the Council. And Dr. Thomas Sprat was not the man to stand upon his rights in the face of power, and assert the liberty of the subject and the freedom of Englishmen.

He, therefore, professed his willingness to answer all questions, and the examination proceeded:

"Have you composed a Declaration for the present intended descent of the late King James into England?"

"Did you draw up any heads, or materials for such a Declaration?"

"Were you ever solicited or applied to by any person for the undertaking such a work?"

"Do you hold correspondence abroad, in France?"

"Have you ever signed any Association for restoring the late King James?"

"Do you know of any such Association? Or any persons who have subscribed one?"



Each and all of the questions the bishop solemnly answered, "on the faith of a bishop and a Christian," in the negative.

Next he was told that the papers seized at Bromley had been examined, but nothing had been found in them. There was one thing, however, that he ought to explain. It was now May the 9th, and the correspondence ceased, or almost ceased, about the 25th of March. How came it there were no letters, or only very few, of later date?

The bishop was able to answer this awkward question. He only kept letters of interest, and before Lady-day, the House being in session, he had had many such letters from friends in London. About Lady-day, the House rose, and this kind of correspondence ceased. Moreover, he himself had been in London several times, for days together, between March the 25th and May the 8th, and there was not so much occasion for his friends to write the news of the town to him. This answer sheds a good deal of light on the habits of our forefathers, before the days of newspapers. Nowadays, the Bishop of Rochester doubtless finds all the news of the town in his *Times* every day. In those days, the man in the country was obliged, if he would keep in touch with public events, to engage the services of friends.

The answer was satisfactory, apparently; for none of the lords asked any other questions. The prisoner was ordered out of the room—but not before he had vehemently protested his innocence of treasonable practices; and was finally sent home to Westminster, still under guard. At the end of ten days the guard was withdrawn, and the bishop began to congratulate himself that he had escaped lightly. Back he went to Bromley.

But on the 9th of June he was summoned, by a curt letter, to attend again before the Council on the following day. Accordingly, on the 10th of June, the bishop presented himself before the Council. A glance round the room told him that besides their lordships there was present another man. "Ah!" said the bishop to himself, "here is my accuser." Dr. Sprat was rather shortsighted; but he could see that the man had a villainous cast of countenance—what an Irish counsel called "a hanging face."

Lord Nottingham wasted no time: "My lord, do you know that person?"

*Bishop*: "My lords, I know the face, but I cannot tell where I have seen him."

*Earl*: "View him well. Has he ever brought you a letter from one Mr. Young?"

*Bishop*: "I do call to mind he has brought me a letter. I cannot, in a moment, remember from whom it was."

*Earl*: "He says it was from one Young."

*Bishop*: "I think it was at my house at Bromley. But I verily believe not from anyone of the name of Young."

*The man*: "I was with the Bishop of Rochester at Bromley. I brought him a letter from Young; and he gave me an answer back to Young."

A light broke upon the bishop. He remembered the voice—a very harsh and dissonant one. The confrontation proceeded. The man, whose name was Blackhead, affirmed that the letter was taken to Bromley on a fast day. The bishop admitted that Blackhead had brought him a letter on a fast day; "but," said he, "it was from a country clergyman, whose name I cannot remember, who asked for an answer back by the messenger. The

letter was as to the letters credential of an applicant for a curacy." Blackhead had been entertained in the servants' hall while an answer was being written.

Now it happened that Blackhead had overacted his part somewhat. Posing as the steward of the country clergyman, he had talked of his business to the servants at Bromley. The bishop mentioned the fact. Were any of those servants near at hand, the lords inquired. Fortunately, the bishop's secretary, one Moore, was waiting outside, and he was promptly called in—a proceeding that seemed to annoy Mr. Blackhead considerably. The informer changed countenance—a fact not unnoted by the accused, who cried out, "My lords, did you ever see greater villainy or consciousness of guilt in any man's countenance?" The secretary remembered Blackhead quite well. He had seen the man at Bromley when he brought a letter from a country clergyman, named Hooke (or some such name), asking whether certain letters of ordination were true or forged. Moore also recollected that Blackhead had called a second time, two or three weeks afterwards; had seen the bishop, and delivered a message of thanks from his master, the country clergyman. On both occasions the bishop had given orders for him to be entertained by the servants.

Blackhead, however, though in a sullen fashion, stuck to his story. He knew nothing of Hooke; his letter was from Young. But the manner of the testimony, especially under a severe cross-examination by the bishop, was not good; and at last the Lords of the Council asked the bishop and Moore to retire. Then they set about Blackhead, and by dint of bullying and threatening, broke down his obstinacy, and he confessed that the bishop's tale was true. The accused prelate was, therefore, honourably dismissed, though not

before he had been asked whether or not he had received any letters or papers from Lord Marlborough lately. He said "Never."

On returning to Bromley, Dr. Sprat took care to hunt for the letter that Blackhead had brought, and had no difficulty in finding it. It was of the purport that Moore had stated, and was signed "Robert Hooke, D.D." The servants at the palace had a perfect recollection of the messenger who brought it. Particularly they remembered how, on his second visit, he had seemed anxious to see over the house. He had heard the bishop had a fine library—might he look at the books? On being denied this, he asked if he might see the rest of the house. Again the butler denied his request, though most importunately urged, because there were ladies, visitors of Mrs. Sprat, in the house. Either the bishop's good ale, or something else, had made the man talk a great deal, and he seemed not at all anxious to leave, lingering about the garden, the hall, and the great parlour a long while.

The servants also told their master that so lately as the 15th of May, when the bishop was detained at Westminster, Mr. Blackhead had made another appearance. This time he said he came to inquire how the bishop was getting on, had heard of his arrest, hoped it was not so serious as people reported, and so on. On the third visit, the rogue had contrived to get into the house before anyone saw him; but it happened that all the rooms were locked up and the keys taken away except that of the great parlour. Once more he did his best to be shown over the house, but again the butler declined his request. Hospitality demanded that the man should be offered some refreshment; but the servants had taken a dislike to the man, and only with

difficulty could be brought to set meat before him. One maid told the butler she thought the fellow looked rather like some knavish, broken-down tradesman than an honest, rich clergyman's bailiff or steward. For her part, she thought he had come to rob the house, or prepare a plan for a robbery.

Yet again was the bishop summoned to appear before the Council. What was his surprise, on entering the council room, to find himself suddenly asked: "My lord, do you know that man?" (The Earl of Nottingham pointed to a man standing near the door.) The bishop gazed long and earnestly, and then denied having seen him before.

This witness, however, was stouter than the lamented Blackhead. He asked if the bishop did not remember him preaching at Bromley College. The bishop simply said, "I never saw you before in my life." "You will know me better," rejoined the man in a sneering tone, "when Captain Lawe appears. I warrant you do not know Captain Lawe, neither." The bishop was nettled. "I do not know," he said haughtily, "that I am obliged to answer this saucy fellow. But since he asks, I say that I never knew a Captain Lawe in my life. I should not be surprised," he added, "if this is the Young spoken of by that other villain, Blackhead, last week." "You are right," replied Lord Nottingham; "this is Robert Young." "I know nothing of any Robert Young," the bishop answered, "except one who wrote to me from Newgate Prison a year or two ago, asking for assistance; but when I had written to the Archbishop of Dublin, to whom he referred as his diocesan, I found he was a thief and a ravisher and a rogue."

After a short argument, and the bishop insisting, Blackhead was sent for. Meanwhile, Young's wife was

called in, a paper was shown to her, and she was asked when she saw it last. She declared that Captain Lawe gave it to her to give to her husband. She recognised the paper. Lawe said it was "a sociate, or some such thing." Lawe gave it to her not sealed up or enclosed, but open. The honest man may take comfort from the fact that the liar almost invariably lies too much. Mrs. Young's statement, in this case, was a good example of the rule.

Before there was time for the woman to be examined further, a messenger returned with Blackhead. The bishop, meanwhile, had told the Councillors the story related to him by his servants, and had produced the letter signed "Robert Hookes, D.D." On Blackhead being brought in, the Earl of Nottingham showed him the letter, and asked if it was the same he had carried to the bishop. After some hesitation, he admitted the fact. Did he receive an answer? Yes. For Hookes? Yes. Did he carry that answer to Young? Yes.

"But what made you, on the second occasion, so earnestly desire of the bishop's butler and his other servants that you might see the rooms in his house, especially his study?"

"I do not remember that I asked to see the study. The house I might, out of curiosity."

The Earl of Nottingham reminded him that the bishop's servants could be called to contradict him; whereupon the witness said he could not say positively that he did not ask to see the study. He remembered asking to see the other rooms.

"Why were you so importunate to see any rooms?"

No answer. Then the Earl of Nottingham, speaking sternly, delivered his blow. "Had you any paper you

designed to drop or leave in any part of the bishop's house?"

Blackhead's face showed that the stroke was mortal. He stammered; he looked about; he tried to avert his eyes from the stern glances of his judges. For, be it known, that although my Lords of the Council would have hunted Sprat of Rochester to death with considerable pleasure, they were gentlemen, and men of honour. "Speak!" Lord Nottingham commanded. And slowly, with wry face, as he had been another Isaac of York bargaining for his ransom, Blackhead spoke. "I must confess—I had a paper—in my pocket. I designed to—to—to put it in some part of the house." The Lords of the Council stirred in their seats. "What *did* you do with it?" pursued Lord Nottingham. "I did leave it in the parlour next the kitchen." "In what part of the parlour?" Sullenly the answer came that it was a flower-pot near the chimney.

The bishop could not restrain himself. "Good Lord bless me!" he cried. For he thought of the search made by Dyves and the king's messenger: how they had put their hands into every flower-pot; how they had searched the chimneys; and how he had laughed at them for their pains. It flashed across his mind at once what an escape he had had. For he knew the temper of the times well enough to be aware that had a treasonable paper been found concealed in his house, the chances were something like infinity to nothing that he would have been convicted of high treason. Think of the cumulation of testimony: a High Tory bishop who had refused to join in the action of the seven bishops in petitioning James II., who had tried to help James II. to bring about a reconciliation with Rome, and who had refused to help William and Mary to



BLACKHEAD DEPOSITING AN INCRIMINATING DOCUMENT IN  
THE BISHOP'S FLOWER-POT.





reconcile the Church and the dissenters; a treasonable paper found concealed in his house; no explanation from him as to how it came there—for he could only have suggested that Dyves or the Messenger had put it there. It would have required no positive evidence from Young or Blackhead, or only the slightest; and no protestations of loyalty and innocence could have saved the bishop from the block.

It was only by chance that the outer parlour—a sort of waiting-room—had not been searched as other rooms had been. Had the messengers not been in a hurry to take their prisoner to town that night, they would probably have searched that room; and, if they had, the paper must have been found. Thomas Sprat, Bishop of Rochester, was a cautious man and a dexterous politician. By his adroitness he had contrived to keep his place under James and under the new sovereigns; but this time he owed his preservation to no wit of his own.

The Earl of Nottingham continued to extract the truth, slowly but surely, from his man. Blackhead successively admitted that Young gave him the paper; that the paper was the mysterious "Association"; that Young told him to put it in the flower-pot or some other hiding-place.

The next thing was to clear up the mystery of the third visit—made when the bishop was in custody. Blackhead admitted the visit. What was his business? The rogue would not say. "You pretended," said Lord Nottingham, "to condole for the bishop's imprisonment. It is manifest that could not be your business. What was it?" After a while out it came. The false spy had gone down to recover the paper from the flower-pot in the parlour, and had, in fact, done so.

The letters being handed round the board, all the lords immediately perceived the truth of the discovery ; and the bishop was told that the business was at an end for him.

It was, however, by no means at an end for Robert Young. That bold and shameless villain was a criminal in grain. When he discovered the plot to the Privy Council he was in Newgate Gaol, imprisoned for non-payment of a fine, which was part of his punishment for a forgery. Whether he was English, Irish, or Scotch, nobody knows. He gave different accounts of his nationality in all three countries. By means of forged testimonials he had obtained deacon's orders in Ireland ; had debauched a young woman ; committed bigamy ; came to England with forged letters of priests' orders ; was detected by Archbishop Sancroft ; begged all over the country ; forged a testimonial from Sancroft ; and, finally, forged and passed off by a most ingenious fraud several bills of exchange drawn upon merchants in London. On one of these it was that he had been convicted.

He had invented the plot merely in order to raise money. Such was his skill in forgery that all he had to do was to obtain a specimen of the signature of each of his victims, and he could easily manufacture evidence against them. How he got hold of the other signatures I know not. The reader has seen how he procured a specimen of the Bishop of Rochester's—*i.e.* the answer to the Robert Hookes letter. Young calculated that if he could get a copy of the "Association" into the bishop's house and cause it to be found in a hiding-place, the bishop might be convicted of treason without more evidence. Blackhead was a broken-down tailor, of a character only one degree less bad than

Young, but lacking some of the principal scoundrel's hardihood.

Robert Young was duly tried for the forgery of the "Association" along with Blackhead. They were convicted on the clearest evidence, and, as the law then stood, were sentenced to be hanged. The lesser criminal escaped the gallows by turning informer in another case, but Young expiated his crimes at Tyburn, having previously confessed his guilt.

Let me conclude by quoting the words of the bishop's speech to the Council: "I must always acknowledge, my lords, the signal providence of God in so visibly protecting an innocent man."

## VIII.

### THE 'FORTY-FIVE.

#### *Trial of Simon Fraser, Lord Lovat.*

SIMON FRASER, Lord Lovat, was a remarkable man and a wily politician. Born in the reign of Charles II., his youth and young manhood were passed in those troublous times when James II. was making it impossible for the Stuarts to continue to reign in Britain. On the accession of William III. and Mary he adhered to the Jacobite cause for many years, and intrigued with the exiled James. But his attachment to the Stuarts seems to have been merely another form of his regard for Simon Fraser. He was a traitor to both sides ; and, naturally, was equally distrusted by each.

His adventures would fill a book. They included imprisonment in France at the hands of the Chevalier ; the forcible marriage of a lady, whose cries of dissent during the ceremony were drowned by the playing of bagpipes ; condemnation and outlawry for treason ; and divers other ploys. He managed to make his peace, after a fashion, with William, and afterwards with Anne ; but there is little doubt that he would have welcomed the re-establishment of James.

When George I. ascended the throne, Simon Fraser deemed it wise to adhere to the House of Hanover. I do not believe he ever troubled his head about loyalty or patriotism. For him, the best king was he who would

promote the interests of Simon Fraser. In the rebellion of 1715, there is not the slightest doubt that the activity and talents of Fraser were of most material aid in suppressing the rising. Sir John Mackenzie held Inverness for James. Fraser, hastily assembling 1,000 men, marched on the town, and fairly bluffed the garrison out of it. At his trial he related, with many a chuckle, how he sent a message that he would blow garrison and castle and strong steeple and all into the air unless the place were surrendered by ten o'clock the next day, and how Mackenzie thereupon ran away. The joke was that the wily Simon had only two pounds of gunpowder in his whole army. He also forced Lord Seaforth and the Duke of Gordon to submit; and effectually reduced the rebels in the far North.

George I. rejoiced in the shrewd, witty Scotsman, and gave him both money and honours. For many years Lord Lovat held command of an Independent Company, 1,000 strong, of Highlanders, and was also Sheriff of Inverness, an office of both honour and profit; and if he had been continued in this command, and allowed to draw the emoluments thereof, I make no doubt that he would have lived and died a devoted Hanoverian, and there would have been no 'Forty-Five. He had, in the meantime, succeeded to the chieftainship of the clan and title of Lord Lovat, which made him enormously powerful.

But suspicion was cast on his loyalty. His regiment of stalwart Frasers and Munros was disbanded; and, what was more important, the pay was stopped. The office of sheriff was given to another. The Highlander thought himself ungratefully used, and not without reason. And he promptly entered into a plot with other Highland chieftains to restore the Stuarts. He was

careful, however, to make plain to the exiled house that not a Fraser should march or draw claymore unless and until their chieftain was raised to the dignity of a dukedom, and endowed with the commission of lieutenant-general and Lord-Lieutenant of the North.

The plot, or Association of the Seven Chieftains—Lovat, the Earl of Traquair, Campbell of Auchinbreck, Cameron of Lochiel, Lord Perth, Drummond, and Cluny Macpherson—was to the effect that if the King of France would land 3,000 men in Scotland, and support the effort by an invasion of England with 12,000 troops, the associates would raise their clans and their neighbours and drive out the Elector of Hanover. This was about the year 1740.

The vigilance of the English Fleet stopped the French invasion; and eventually, after five years of negotiation and vain attempts to induce Louis of France to risk a few men on the shores of Scotland, Charles, the Young Pretender, took the romantic and daring step of landing in Scotland without followers, and calling the Highland clans to follow his standard.

What happened, every schoolboy knows. I am only concerned with the part taken by Fraser. That wily politician and veteran soldier, now of the age of 79, gnashed his teeth when he heard of the young Prince's arrival. He foresaw failure from the outset. A Stuart Prince supported by 3,000 veteran French troops, and backed by the power of Louis was one thing; a Stuart Prince without such backing was another.

The fiery Lochiel, the gallant Cluny Macpherson, and many another hot-blooded chieftain instantly mounted the white cockade and led kilted clansmen to follow the standard of the Bonny Prince. The cooler blood of old Lovat restrained, for a time, the powerful

Fraser clan. But eventually, on the news of the battle of Prestonpans, some 800 men were raised and sent under the leadership of the Master of Lovat, Fraser's eldest son, who was a mere lad of nineteen, to join the Prince. Even then, the step was taken cautiously, so that the party did not leave Inverness-shire until the return of the Young Pretender's army from England.

After Culloden, Lord Lovat hid himself in the Isle of Morar, but was captured by a search-party, and put on his trial before the Court of the Lord High Steward in London, to answer an impeachment of the Commons for high treason.

The charges against him were those of levying war against the King, and corresponding with the Pretender and with the agents of the Pretender.

The trial was a remarkable one—no less for the character of the evidence called than for the wit and bearing of the prisoner at the bar.

If anyone would try to realise the difference between judicial methods then and now, he may do so by a consideration of this case. Here was an old man, so infirm that he could neither stand nor see, who had arrayed against him the Attorney and Solicitor-Generals, compelled to make his own defence without the aid of counsel. Having been incarcerated in the Tower for a long time, and deprived, even before conviction, of all his means, he was unable to procure any witnesses from Scotland, where all the witnesses would naturally be. And every material witness for the prosecution was a man who was himself in prison for treason; and who had, therefore, the strongest possible motive to give evidence favourable to the Government.

The first of these was Robert Fraser, formerly secretary to the prisoner. He had been taken at Morar with



his master. He deposed that, on learning of the Young Pretender's landing, his chief was angry because he had landed without an army ; but that he at once took steps to raise and arm the clan. That the Master of Lovat, who was at the University of St. Andrews, was sent for, and told he was to lead the clan. That Lord Loudon, Lord President of the Session, was then at Inverness, and sent letters to Lovat to dissuade him from rebellion ; and that Lovat answered by a letter alleging that his son, the Master of Lovat, was stiff-necked and rebellious, and was leading away the clan without his permission and against his will.

The Lord President, it may be said, was not blinded by this excuse. He managed to arrest Lord Lovat and clap him into Inverness Castle. But to catch was one thing ; to hold was another. Arrested on the 11th of December, the octogenarian prisoner escaped on the 19th.

Robert Fraser proceeded to testify how that after long shuffling and paltering, the Master of Lovat set out south ; how that, after he had gone, the old lord tried to recall him and his men ; but the Master wrote a letter to say, " Do not lose on both sides at once." Certain it is that Lovat wrote letters (by the hand of Robert Fraser) to Murray of Broughton and Lochiel, and also to his son, saying that his one desire was that the Master might " cut a good figure in the Prince's service." Several of these letters had been found, and were produced in Court.

The sensation of the trial was reached when Mr. Noel, one of the managers of the impeachment for the Commons, announced : " My lords, the next witness we beg leave to call in support of the charge is John Murray of Broughton." Now John Murray of Broughton was a

gentleman of good family but broken fortunes who had been one of the prime movers in the rebellion. A man of great ability, he had acted as principal secretary, a sort of Prime Minister, to the Young Pretender. After hiding for some time after Culloden, he was captured by—or, rather, surrendered when resistance was hopeless to—a party of Cumberland dragoons. He was acquainted, of course, with all the ramifications of the rebellion; and it was obvious that if he turned approver the prisoner was lost. A gallant effort was made by the prisoner's counsel—who were allowed to argue points of law, though not to speak on the facts—to exclude his evidence on the ground that he was a person attainted by Act of Parliament, and, therefore, incompetent as a witness. But the objection was repelled, and the whilom "Secretary of State" stood forth to consummate a dark and doubtful life by the darkest and most doubtful act of it.

He told how Lovat was a party to the original Association. How he promised to raise the Frasers for King James. How, when the Young Pretender landed, he shilly-shallied according as his hopes and fears alternately predominated. How, at last, he threw off the mask, and sent his son to join the rebels. How he protested that, but for his age and infirmities, he would have led the clan himself. How he intrigued for the patent of Duke of Fraser. How he received the Prince after Culloden. How he met young Lochiel and the other fugitive leaders after their defeat, and advised the raising of fresh forces to hold the country, counselling guerilla warfare in the Highlands, where Cumberland's dragoons would be useless. How he received from the Prince's treasury part of a sum of 36,000 louis d'or sent over by the French king.

Lovat declined to cross-examine him—alleging that he could not, by reason of infirmity.

But Lord Talbot, one of the Peers, subjected the witness to some questions. He forced Murray to say that, though he was on oath, and therefore obliged to speak truth, he would not, if he had not been a prisoner in the hands of the Government, have come to give evidence against the noble lord at the bar.

I am constrained to say that John Murray of Broughton would have made a better figure at the bar of history had he declined to say a word or to answer a question.

All the witnesses were not of his cast, one is glad to say. There was one, Riddell, who was bullied and badgered by the Attorney-General for more than an hour, but persisted in an obstinate forgetfulness and a most diverting ignorance. He could not say why the clan Fraser marched to Perth. He had not the remotest idea what the bell-tents were for. He saw men marching about at Castle Downey, but never saw that Lord Lovat saw them. He had always been out of earshot when Lord Lovat spoke to anyone.

William Walker, too, an old servant of Lovat's, had an equally convenient Highland memory. Precious little was extracted from William Walker. He did remember, quite well, how his old master had cursed at Fraser of Byerfield for trying to capture Lord Loudon (a loyal peer). Everything else he either did not know, or had forgotten.

Another vassal, Hugh Munro, reminds one of nothing so much as "the creature Dougal," when he was in the hands of the red-coats. His answers were so stupid and so contradictory that the prosecutors gave him up as a bad job, having got nothing out of him at all.

Equally stubborn and intractable was Thomas Fraser, the man who made the bell-tents and mended the colours. He swore, and would not budge from it, that he knew nothing about the use for which they were intended; and, as far as he was aware, Lord Lovat was equally innocent. The loyal fellow would have sworn anything else, I doubt not, for the old chief.

The other material witness was Hugh Fraser, a clansman who had gone into the rebellion purely and simply because his chief was in it. Hugh lived in Edinburgh, and was a solicitor, and he had done his best to keep Lovat out of the mischief and to remove the heir of the house out of harm's way. He told how Lovat shilly-shallied—first he would, and then he would not; first the Master was too quick in raising and equipping the clan, and then too slow, until at last the young man had burst out that he would “no longer be made either a tool or a fool of”; and so explicit orders were given to march. Hugh Fraser's evidence was directed, very largely, to the object of saving the young Master of Lovat.

The prisoner did not cross-examine to it; but merely observed with a sneer, that he should think no footman would believe it. Another (formal) witness he was asked if he wished to question. “No!” said he; “further than to wish him joy of his young lady.”

The evidence was plain. Lovat was, at heart, neither enthusiastically Hanoverian nor Jacobite. He was a Fraserite. The rebellion had his sympathies, but he saw its hopelessness almost from the beginning. The rebellion he would have been prepared to throw himself into was one supported by France. The clan had, after all, gone out against his better judgment, though not against his will.

The old lord made as good a defence as was possible in face of his own letters. He appealed for sympathy on account of his age and infirmities. He attacked with great violence John Murray of Broughton and Robert and Hugh Fraser. Murray he styled "the true disciple of his master Iscariot." Robert Fraser was scathed by the description, "a person who never had the good fortune to be worth a shilling, and whose veracity and truth never exceeded his riches." The shrewd Scotsman's defence was not unworthy of the reputation he had acquired as a man of ability, and was really a wonderful composition for a man of eighty. But nothing could save him in face of his own letters. The peers unanimously found him guilty, and the dread sentence of hanging, drawing and quartering was passed.\*

Lord Lovat heard the condemnation unmoved. He may have been a double traitor, and was, without doubt, an unscrupulous old ruffian; but he was no coward. To the peers he said, as he was removed to the Tower: "God bless you all, and I bid you an everlasting farewell. We shall not meet all in the same place again; I am sure of that." With this characteristic gibe, he followed the gentleman gaoler, who bore the axe edge inwards.

His execution was appointed for the Thursday; and not once, in the face of the world at any rate, did he abate one jot of his wit or spirit.

The major of the guard came in on Monday morning with a "How do you do, my lord?" "Do!" he answered, "I am about doing very well; for I am preparing myself sir, for a place where hardly any majors and few lieutenant-generals go." It will be remembered that Fraser held a lieutenant-general's commission.

\* It was afterwards commuted to one of beheading.

The next day he requested a pillow to be brought and placed on the ground, when he coolly practised kneeling down and placing his head and neck on it, as a preparation for the block. "I believe," he observed, after a few attempts, "that with this short rehearsal I shall be able to act my part in the tragedy well enough."

On Wednesday the warder came in, and found him singing a song. The warder, who had grown to like his prisoner, asked how he could be so merry when he was to die on the morrow. The old lord snapped his fingers. "I am as fit for an entertainment as ever in my life." A barber came to shave him, and talked, as barbers always have talked; but this time on serious subjects. He informed the noble prisoner that his (the barber's) father was a Muggletonian who expected to enter heaven on the Judgment Day. "Give my service to your father," said the old Scotsman, "and tell him I shall go to heaven before him; for he does not expect to be there until the Judgment Day, but I hope to be there in a few hours."

They might kill the proud chieftain, but never could they break his spirit.

On the morning of his execution he was exceeding cheerful. He smoked; drank wine; sent his best wig out to be combed, and, when the barber returned it, scolded because it was not properly curled. He regretted that he had not in town his best embroidered velvet suit!

At the scaffold the sight of the grisly preparations perturbed him not a whit. He asked a gentleman standing by to lend him an arm to assist him to mount the few steps. An enormous crowd had gathered to see the grisly spectacle. Casting a glance round, the condemned man remarked to the gentleman, "God save us!

Why should there be such a bustle about taking off an old grey head that cannot get up three steps without two men to support it."

He gave a gold-headed cane to the faithful William Fraser. To the executioner he handed a purse of ten guineas, with a request to earn the fee by striking well and surely. Then, having exhorted his friends not to look so doleful, he laid his head on the block. One blow ; and all was over !

So died Simon Fraser, Lord Lovat. And it must be said that in his last hours, at any rate, he acted as became the lofty head of a proud clan. Much there was in his life to blame ; but in his death, nothing.

No doubt the Whigs were fighting for dear life and all that makes life dear ; but the execution of an old man of eighty, the trial of a man so aged and infirm without the help of counsel, imprinted a stain on the Whigs only less dark than that resting on the Tories by the sacrifice of Alice Lisle.

## IX.

### PALMER THE POISONER.

#### *A Case Not Beyond a Doubt.*

A PRISONER for whose benefit an Act of Parliament is passed, to enable him to have an impartial trial, can hardly complain that he has not had every chance to make good his defence. Yet William Palmer, who was brought up from Staffordshire to the Old Bailey because in Stafford there was too much prejudice against him, might well be believed when he said, before his execution, "He was not poisoned by strychnine."

That William Palmer was guilty of the murder of John Parsons Cook there cannot be a shadow of doubt. That he was one of the class of men who ought to be exterminated, there is also no doubt. For there was every reason to believe that not only had he poisoned Cook—a ruffian who was, bloodthirstiness apart, much of Palmer's own stamp—but that he had, from the most sordid motives, poisoned his own faithful and long-suffering wife, and his own brother. Mr. Justice Stephen, in his "History of the Criminal Law," deliberately pronounces the verdict, "No more horrible villain than Palmer ever stood in a dock." From that verdict I see no reason to dissent; but I do make bold to doubt whether a jury was safe in convicting him of poisoning Cook *by strychnine*.

Let us look at the facts.



William Palmer was a medical practitioner in general practice at Rugeley in Staffordshire. At one time he had so good a practice that he was obliged to keep an assistant, one Thirlby. Palmer's father had been in trade, and on his death-bed left the respectable fortune of £70,000, of which each of his seven children took £7,000, and the remaining £21,000 was settled on the widow for her life. William, besides his portion of £7,000 and his excellent income from his practice, had some small fortune with his wife. The reader should notice, however, that this lady's fortune died with her, as she had only an interest for life in it, and the capital was beyond her control.

After his marriage, Palmer settled down in Rugeley in good style—large house, carriage and pair, several servants, and all the appurtenances of a professional man of easy fortune. In addition to this, the young doctor had the satisfaction of being a popular man with his neighbours. His many deeds of kindness to the poor and the suffering, his genial hospitality, his affable manners, could not fail to produce a good impression, which was not lessened by the fact that he was regular in his attendance at church, and punctual and reverent in his performance of religious duties. In the domestic circle, William Palmer was no less happy. His wife was devoted to him, and he, so everybody said, to her. Their wedded life was idyllic. The only cloud on their bliss was the fact that of their five children, four had died in early infancy—all of convulsions.

Had William Palmer died in 1852 all Rugeley would have put up its shutters and followed his funeral, and a handsome monument would have recorded his public usefulness and his private virtues.

Soon after his marriage, however, William Palmer

had begun to breed and train racehorses, and when he engaged an assistant he sometimes found time to attend race meetings. Gradually the love of the Turf grew upon him, until we find him, in about 1850, selling the bulk of his practice to Thirlby, his assistant, only retaining for himself a few patients connected with his family. Betting soon did for the young doctor what betting has done for richer and cleverer men than he. It brought him to ruin. Nobody knew this, however, except a man named Pratt, a solicitor in the West End of London, who carried on the business of a money-lender. In the year 1853 Palmer applied to Pratt for a loan, and obtained it on the ruinous terms usual in these cases.

From that time the descent began in earnest.

Early in 1854 Palmer conceived the project of insuring his wife's life. The reason he gave for doing this was that her fortune would die with her, and he wished to make provision for his son. But when he proposed to several offices insurance for large sums, the premiums on which exceeded the wife's income, they all declined except one. With this company, Palmer effected an insurance for £13,000, and paid the first premium. Nine months after, Mrs. Palmer died suddenly (September, 1854). Her husband was prostrate with grief. His tears flowed freely. His mourning hat-band was of the largest size. He received the condolences of the neighbours with an air of melancholy resignation.

And he received from the insurance company £13,000, almost every penny of which went to the voracious Pratt.

Still the Turf continued to be one series of losses; and at the end of 1854 Palmer was again in sore straits for money. Pratt did not care to discount bills without

some security, so a policy was effected on another life. This time Walter Palmer, the doctor's brother, was the "life." The office was the Prince of Wales Office, and the sum assured was £13,000. Pratt held the policy; and on the strength of it discounted bills to the tune of £13,500. These bills purported to be "accepted" by Mrs. Palmer, senior; but there is no doubt William Palmer had forged his mother's signature. When two of these bills became due, with others soon to mature also, it was thought time to extract the £13,000 from the Prince of Wales Society. Therefore, in August, 1855, after the insurance had been running about eight months, Walter died—suddenly.

How any insurance office ever came to insure the life of Walter Palmer, I am at some loss to apprehend, for he was a notorious drunkard. Applications for very large sums had been put in at other offices; but a hint that Mrs. William Palmer had died suddenly after nine months' insurance, was enough for all the companies except the Prince of Wales. But even this office was not altogether credulous. When the worthy Pratt tried to collect the £13,000, he was informed that the mortality in the Palmer family had been somewhat excessive within the last twelve months; and that not a penny would be paid.

Pratt promptly began to press Palmer for money. There was, besides, a sum of £10,000 due to a Mr. Wright, of Birmingham, for which Mr. Wright held a bill of sale. And there were other debts. How to raise the money was a serious question. The life insurance business had failed. For, besides the refusal to pay the money on Walter's death, there was the ugly fact that William Palmer had tried, and failed, to insure the life of a broken down fellow named Bates for £80,000. It

was, I should imagine, lucky for Bates that the proposal was rejected.

The financial outlook was gloomy. The clouds were ready to burst, and Palmer's bank balance was £9 6s. This was in November, 1855.

Now Palmer had a friendly acquaintance with one Cook, who was, like himself, a racing man. Cook had been bred to the law, but, on coming into about £12,000, abandoned the drudgery of a solicitor's office, and betook himself to the Turf. In September, 1855, he had joined Palmer in a bill to Pratt for £500. The cash received for this was £375, which was sent to Palmer in the shape of a cheque payable to Cook and himself. By forging Cook's endorsement, Palmer contrived to get all the money. The forged endorsement was used afterwards as one argument to show that Palmer was interested in Cook's death. It should be said that Cook was a man who led a dissipated life.

On Monday the 12th of November, 1855, this noble pair of sportsmen went to Shrewsbury Races, where a horse of Cook's won a race, by which Cook became entitled to stakes of £380, and bets of £2,000. He received about £800 on the course. On the Wednesday, Cook, Palmer, and others were drinking together, with other men in the room, when Cook complained, "This brandy burns my throat dreadfully," and put down his glass with a small quantity still left in it. Palmer picked up the glass, drank the remainder, and observed, "I don't think there's anything in it," and handed the glass to a man named Read. "Do you think there's anything in it, Read?" "What's the good of asking me," replied Read, "when the glass is empty?" Cook then left the room, and called out a man named Fisher. "I believe that damned Palmer has been dosing me," he

said. "Here! take charge of these for me." And he handed Fisher a big bundle of bank-notes.

On the Thursday, Palmer and Cook went to Rugeley together. Cook stayed at the Talbot Arms, and Palmer at his own home immediately opposite. Cook complained of feeling unwell. He was sufficiently well, however, to dine next evening with Palmer at the latter's house, where Mr. Jeremiah Smith, an attorney, was also a guest. On the Saturday morning Palmer ran across and ordered Cook, who was in bed, to have a cup of coffee, which the sick man drank in Palmer's presence, but vomited it immediately. About lunch time, Palmer sent a woman to get some broth for his friend; and, when it came, he put it down to warm by the fire in his own house. Subsequently he poured it into a cup and sent it across to Cook, with a message that Mr. Jeremiah Smith had sent it. Presently Palmer went to the Talbot Arms and insisted on Cook finishing the broth. The poor man did, but immediately vomited it.

On the Sunday, Palmer sent more broth, which Cook drank and vomited. This time, however, a serious thing happened. A servant, Elizabeth Mills, tasted the broth—a couple of spoonfuls or so—as she was carrying it upstairs, and dearly she paid for her curiosity. For she became very sick within half an hour, and continued to vomit for about four hours.

On Saturday, Palmer sent for Mr. Bamford, a medical man of eighty years of age, and told him that Cook had a bad bilious attack. On Sunday he wrote to a Mr. Jones, an apothecary and friend of Cook's, to say "Cook is confined to his bed with a severe bilious attack, combined with diarrhoea. Will you come and see him?" Bamford found no symptoms of biliousness, and the diarrhoea was an invention. And there can be little

doubt that Palmer called in the surgeon and wrote to the apothecary in order to manufacture evidence in his own favour.

On Sunday night, or early Monday morning, Cook had another severe attack of pain and vomiting, but he felt well enough to get up and dress on Monday forenoon. Palmer, in the meantime, had gone to London by an early train on Monday, and arranged for the collection at Tattersall's of most of Cook's Shrewsbury winnings. He also gave instructions for part of the money to be paid to Pratt, the money-lender. The net result was, that by Monday night (November 19th) Cook had been effectually robbed of everything he had, except an interest in two racehorses that he had pledged to Pratt to secure the £500 joint bill. Also, Pratt had been paid a little on account—enough to keep him quiet for a time and to prevent him suing on the forged acceptances. So long as Pratt did not sue, the fact of the forgery would probably not come out.

Here follows the damning fact against Palmer on the strychnine part of the case. Returning from London to Rugeley on the evening of Monday, the murderer went to the surgery of one Salt, and obtained from Salt's assistant three grains of strychnine. There is an authenticated case which shows that a dose of one-and-a-half grains may be fatal.

On the Tuesday evening, Mr. Bamford, Jones the apothecary, and Palmer all saw Cook, and resolved to give him some pills containing morphine. As Bamford was the regular medical attendant, he was to make them up, and Palmer offered to call for them. At about eleven o'clock Palmer returned to Cook's room with the pills, and administered two of them. Immediately Cook vomited.

At about twelve o'clock, Palmer having gone home and Cook being sleepy, Jones went to bed. He slept in Cook's room. Some ten minutes after, the sick man suddenly called out, "Doctor, get up; I am going to be ill! Ring the bell and send for Palmer!" A ring at the bell brought the chambermaid. Palmer was sent for, and came in two or three minutes. The chambermaid thought he was dressed—though he pretended to have been in bed—when from the bedroom window he answered her call. He went back to his house, and speedily returned with some pills—ammonia pills he said they were—of which he gave two to Cook. But no sooner had Cook swallowed them than he began to scream loudly, threw himself back in the bed, and fell into violent convulsions. "Raise me up," he gasped, "I shall be suffocated." For nearly ten minutes the convulsions continued. Every muscle seemed affected. So rigid were his limbs that it was impossible to raise the sufferer into a sitting posture. He asked to be turned over, and this was done. Spirits of ammonia failed to stimulate the action of the heart, and in about a quarter of an hour after his cry to Jones, John Parsons Cook was dead. His teeth were found to be clenched, and his body so bowed and twisted that if it had been placed upon the back it would have rested on the head and the heels.

After his death his father-in-law, a gentleman named Stevens, insisted on a *post-mortem*, and had the viscera, and afterwards the spleen, kidneys and some blood sent to Dr. Taylor, the greatest authority of the day, and Dr. Rees for examination. Palmer was present at the *post-mortem*, and his conduct was very strange. He pushed against an assistant who was holding the stomach, and upset some of the contents so that they

could not be recovered. He also cut the covering of a jar which held the portions reserved for analysis, but was detected before he could take anything out.

In the end there was an inquest and a verdict of "Wilful Murder" by the coroner's jury. Then the bodies of Palmer's wife and brother were exhumed. One was found saturated with antimony; the other was too much decomposed to yield any result. But other coroner's juries returned verdicts of "Wilful Murder." Excitement grew to such a height, and the feeling against the prisoner was so strong, that Parliament passed an Act—still occasionally put in force—to enable an accused to be removed for trial to the Old Bailey when feeling in his own county would prevent a fair trial.

There Lord Chief Justice Campbell, Baron Alderson, and Mr. Justice Cresswell presided; Sir Alexander Cockburn, Mr. Edwin James, and three juniors appeared to prosecute; and Mr. Serjeant Shee, Mr. Grove, Q.C., Mr. Gray, and Mr. Kenealy (who afterwards defended the Claimant) defended.

It was a memorable trial, alike for the brilliant advocacy of Serjeant Shee, the terrible, merciless cross-examination of Cockburn, and the conflict of evidence amongst the medical men who were called.

The main question was, "Did William Palmer poison Cook by strychnine?" And the questions on that were: (1) Could strychnine be traced to Palmer's possession? (2) Was any strychnine found in the body—if not, why not? (3) Were the symptoms compatible with strychnine poisoning, *and with nothing else?*

The prosecution, in the first point, produced one Newton, a surgeon's assistant, who swore that *about nine o'clock* on the Monday evening he had received a



visit from Palmer, who asked for and obtained three grains of strychnine. The defence set up to this was an *alibi*, which rested on two witnesses: one from Euston Station, who swore that Palmer left London at 2 p.m. (you remember he had been up to London that day, as was admitted), and that the train arrived at Stafford at 8.45 p.m. From Stafford there was no line to Rugeley, and the distance was nine miles. To supplement this evidence, a Mr. Jeremiah Smith, a Rugeley attorney, went into the box, and his testimony went a long way to damage the prisoner. Curiously enough, it was probably true. In substance, he swore that at 10.10 p.m. he saw Palmer alighting from a cab, which was coming from the direction of Stafford, that they went into Cook's room together, and that Palmer did not leave till late. This fitted in with the railway man's evidence.

But Cockburn administered a terrible cross-examination—

"Did you help the prisoner in his applications to insure the life of Walter Palmer?"

"No."

"You had nothing to do with it?"

"No."

"Did you sign the proposal form as a witness?"

"No."

"Look at this document, sir!" (A document was handed up.) "Is that your signature?"

"No."

"Look again, sir! And be careful of your answer."

"It is very like my signature." The witness was beginning to look uncomfortable. Cockburn said no word, but eyed the witness wrathfully. Then suddenly: "Come, sir!"

"I believe—I swear—yes, I swear it is not my writing." Looking up, Mr. Jeremiah Smith met the same stern glance. "It—er—it is a very good imitation of my writing."

"Did you get it from Pratt?"

"No."

"From Palmer?"

"I might have done." Cockburn stretched out a monitory finger. "I don't recollect." A long pause. "No doubt he did give it to me."

"Before it was signed, or after?"

"No doubt before—that is, I——"

"Do you still swear it is not your signature?"

The sweat began to pour from the witness's face.

"Do you swear?"

"I do," gasped the unhappy man.

"Did you apply to be appointed agent for an insurance office, the Midland Counties?"

"Yes, I did."

"Was that in order to put in a proposal on Bates's life for £10,000?"

"Yes."

"Look at that" (handing him a document). "Is *that* your writing?"

"Yes." (The signature on this document was exactly the same as that on the other.)

"Now, sir, having seen this paper, were you applied to by the prisoner in December, 1854, to attest a proposal for £13,000 on Walter Palmer's life?"

The witness hesitated, and finally stammered forth, "I don't recollect."

"What, sir!" thundered Cockburn, "with your signature staring you in the face? Have you the smallest doubt?"

The document rustled in the witness's hand, which shook as if palsied. His face blanched, reddened, blanched again. The sweat poured off his head and face. Again Cockburn started to speak. "Have you——"

"I have no doubt." The answer was weak and faint, and thenceforth the witness was in a dreadful state of nervous collapse. He admitted that he had helped to carry the Walter Palmer insurance through; had tried to get the Bates proposal accepted; and, finally, left the box a discredited witness and a ruined man.

The effect on the defence of the crumpling up of a principal witness was disastrous. They were almost bound to put him in the box, because Palmer's story that he only arrived at Rugeley about 10 p.m. and went straight to the sick man's chamber needed corroboration. Had no witness been put forward to corroborate it, the prosecution would have said, "Why do you not call someone? Surely someone must have seen you either on the road between Stafford and Rugeley, or arriving at Rugeley."

In addition to the evidence of Newton, there was evidence of a chemist's assistant named Robinson, that on Tuesday evening Palmer purchased strychnine, prussic acid, and a preparation of opium. This strychnine Palmer could not account for.

When the analytical evidence came, Shee made a great effort. Dr. Taylor, to whom the parts had been sent for analysis, was the greatest authority in the country; and he, being called by the prosecution, swore that he had analysed the blood, stomach, spleen, etc., and had found traces of antimony, but *no strychnine*—not a trace of it. This would have helped the defence materially had not Taylor gone on to say that after

strychnine had been in the body a short time it was impossible to detect it by analysis, because it became dispersed into its elements. He then went on to swear that, in his opinion, from the symptoms described, strychnine poisoning was the cause of death.

Serjeant Shee cross-examined in clever fashion. He made much of Taylor's great skill as an analyst, and then put it to him that had any strychnine been there he would have been bound to find it. But the witness said, "No; strychnine was very difficult, sometimes impossible to detect, and quite impossible a day or two after it had been administered."

To counter this testimony, the defence called Dr. Nunnerley, of Leeds, Mr. Herapath, of Bristol, and several others who positively affirmed that if any strychnine had been administered to Cook, it must have been in his body when he died; and that Dr. Taylor must have found it. "I," said Herapath, "have found, and can find, a  $\frac{1}{50000}$ th part of a grain." And he went on to aver, nor could Cockburn shake his evidence, that strychnine did not easily clear out of the system; but, on the contrary, remained for a long time. On this part of the case the defence had the best of it.

But when it came to medical testimony, and evidence of the prisoner's conduct, the prosecution's turn came. Half-a-dozen of the greatest authorities of the day swore that the symptoms described by Mr. Jones, the apothecary, were incompatible with anything except strychnine poisoning. Now the symptoms were:—

Sickness and vomiting for about a week—without any signs of biliousness. An attack of a spasmodic, convulsive nature on Monday night. Patient fairly well on Tuesday up to the evening. No attacks all day of Tuesday. On Tuesday night,

the fatal attack, of which Mr. Jones, a competent witness, gave the details as being convulsions; screaming; spasmodic action of the muscles; jaw affected by spasmodic action, but not, at first, locked; clenched teeth; clenched hands; body twisted but rigid, so that if the patient had been laid on his back he would have rested on head and heels; his asking to be rubbed and saying, "Turn me on my right side"; no loss of consciousness or intelligence to the end.

The *post-mortem* examination showed the heart to be perfectly empty. Now there is a disease known as tetanus, which may be idiopathic—arising from a sore, or from worms in the bowels, but not common in this country; or it may be traumatic—brought on by an accident, such as a sudden cut over the eyes with a whip-lash. The characteristic of tetanus is that the patient is seized with spasmodic convulsions, just as Cook had been. And he nearly always dies either of suffocation or stoppage of the heart's action. There is the same rigidity as Mr. Jones described; and, indeed, nearly all the same symptoms. But the doctors pointed out one or two important differences. The principal ones were: (1) In traumatic tetanus the disease is a gradual one—taking two or three days at least to run its course; it is a progressive disease; the patient dies by exhaustion after days of spasms; it is not a disease where you find a man attacked—attack passes off—well for twenty-four hours—then another attack. (2) Idiopathic tetanus comes on suddenly; but you can always find something to account for it, *e.g.* a sore, worms, etc.: no case known which terminated fatally in twenty-four hours or so: no case known in which disease terminated fatally after a twenty minutes' attack. (3) *Both kinds*

*of tetanus*: first symptom is lockjaw: the stiffening of muscles comes afterwards—and the sufferer's face is always distorted into a peculiar grin, which, once seen, can never be forgotten or mistaken for anything else.

Observe the difference between the symptoms. In Cook's case, two attacks, each of appalling suddenness (like idiopathic, but not like traumatic). Again, the attacks intermittent, at an interval of twenty-four hours—unlike tetanus. Lockjaw, in Cook's case, not first, but after some bodily spasms. In Cook's case, no tetanic grin. And last of all, Cook died in twenty minutes after the fatal attack began—instead of lingering for days.

Now all this might prove that Cook did not die of tetanus, but it did not prove that he died of strychnia. Wherefore Cockburn put into the box several people who had seen genuine, undoubted cases of strychnia poisoning; and they described those cases. The most damaging to the prisoner was the case of Mrs. Smyth, of Romsey. It was proved that this lady had swallowed, by the mistake of a druggist, three grains of strychnine. Five or ten minutes after, she rang her bell. Her maid entered, found her out of bed in her nightdress. She writhed on the floor in convulsive spasms: screamed loudly: her teeth were clenched: her body was twisted: muscles rigid. In about seventy minutes after taking the strychnia she died. Just before the end came, she said, "Turn me over."

By way of counterblast, the prisoner called a large number of medical men, of whom the most important was Dr. Nunnerley, of Leeds, a gentleman who was, at the very time, engaged in a case of strychnia poisoning—the celebrated case of Dove, who poisoned his wife. Dr. Nunnerley said the symptoms were those of tetanus

—at any rate, they were tetanic. Cook was of delicate constitution: he had a sore resulting from disease: he was of an excitable disposition. On a man of this constitution and temperament, having this sore, a slight cold would have the effect of causing idiopathic tetanus.

Never, in the history of English trials, has there been a more relentless cross-examination than that to which the Leeds doctor was subjected. He was asked: Did he know that Cook was delicate? Well—he had been told so. By whom? He was not sure—but by somebody. Did he know that all the organs had been found healthy after death? The witness began to look uncomfortable. No, he did not know it. Then as to the disease and the sore produced by it—did the witness know, of his own knowledge, that the deceased had any such disease or sore? No, but he had been told so. By whom? By the prisoner, he believed. Was the witness aware that the deceased's own doctor, a man of eminence, declared that Cook had neither disease nor sores? No, the witness was not aware of it. And as to the cold—What reason had Dr. Nunnerley for saying that Cook had a cold? Dr. Nunnerley took some time to answer; and, in the end, had to admit that there was no ground whatever for the supposition.

Cockburn, in caustic tone, inquired, "Now, sir, with the delicate constitution gone, the disease gone, the sore gone, the cold gone, what grounds have you now for saying there was idiopathic tetanus?" The unfortunate witness was fain to "hedge" a little. He would not say it was tetanus proper. What was it? Well—er—it was—er—convulsions of a tetanic character! Consistent with strychnia poisoning? Oh! dear, no! Why not? Well, the symptoms were not like strychnia—to begin with, the heart had been found empty. "You

say," said Cockburn, "it could not be strychnia because the heart was found empty?"

"Yes."

"Do you know that in Mrs. Smyth's case the heart was found empty?"

"Yes." Now this was a facer, but the witness pulled himself together, and made a wriggle to get out of the bog. "But I do not know how the *post-mortem* was conducted there. If they opened the head first, the heart would naturally be found empty."

This sounded well; but Cockburn put on his grimmest air, and asked, in icy tones, "Do you know how the *post-mortem* of Cook was made?"

"No—yes, excuse me, I do. The chest and abdomen were first opened."

"Then, in this case, the heart would not be emptied by the way the *post-mortem* was conducted."

The witness saw he was caught. He was deeper in the bog than ever. He answered, "No."

"Then WHAT occasioned the emptiness of the heart?"

"It was contracted."

"What caused it to contract?"

"I cannot account for it."

Again, Dr. Nunnerley testified that any intestinal irritation would produce convulsions in tetanic form. He was hinting at epilepsy. But he did not get very far on this new track. Cockburn pulled him up short with the question, "Have you ever known a case of the kind you mention where the patient was conscious to the last?" The witness was obliged to reply, "I have not."

Still the Yorkshire doctor was not vanquished. He put forward one or two more general assertions, all of which the remorseless cross-examiner tore to tatters.



"I say that Cook's case differed from tetanus by strychnine."

"In what particulars?"

"There was the power of talking."

"Don't you know Mrs. Smyth talked?—the last words she said were, 'Turn me over.'"

"She did say something of the kind, I believe."

"Now the next difference?"

"Well—he asked to be rubbed. And the animals I have experimented on could never bear to be touched."

"Did not Mrs. Smyth ask to have her arms and legs rubbed?"

"Yes, I believe she did."

And so Dr. Nunnerley was taught that against cross-examination by a man who knows his business, vague assertions and general statements cannot stand.

Just as, on the side of the Crown, strychnine cases had been shown with symptoms appallingly like Cook's, so the defence tried to prove cases of admitted tetanus with the same symptoms. But they all broke down under the searching questions of Sir Alexander Cockburn. In every case the witness was compelled to admit that lockjaw was the first symptom.

In addition, Serjeant Shee called a number of medical witnesses whose testimony was varied and curious. One, from Edinburgh, said he should think Cook died of epilepsy with tetanic complications. This escaped the lockjaw difficulty, but landed him into another, just as bad. For when he was asked if he ever knew a man in an epileptic fit retain consciousness the whole time, the Scotsman had to admit that he never did.

Another doctor set up a theory of arachnitis—a disease of the spine. He founded himself on three tiny spots that had been seen (at the *post-mortem*) on

backbone. Him Cockburn dealt with faithfully; and when, at the end of a raking cross-examination, he was asked, solemnly, "Will you pledge your opinion in the face of the medical profession that this *was* arachnitis?" the witness was compelled to reply, "No."

Perhaps the best medical witness for the prisoner was the celebrated Dr. B. W. Richardson, the temperance doctor. He sprang a surprise on the Court by starting the theory that Cook might have died of angina pectoris—a theory ingenious in the extreme; because it accounted for the intermittent attacks, the pain, the writhing, the suddenness of attack and sudden death, and the vomiting all the week. He told of a case which, he said, was angina pectoris, where the symptoms were practically identical with Cook's. Cockburn did not cross-examine Dr. Richardson very effectually, because he was entirely unprepared for the evidence; but managed to extract one admission. Asking him about the parallel case, he said:

"Did you analyse for strychnine in that case?"

"No."

"In the light of what you have heard in this case, would you analyse for strychnine the next time you saw such a case?"

"I am bound to say I should."

The speeches of Serjeant Shee and Sir A. Cockburn were worthy of the men and the occasion. Shee, an eloquent Irishman, rose to great heights. Every argument, every persuasion that skill could suggest were used. Could the jury, he asked, be sure of the cause of death when these great doctors disagreed? In one wonderful passage he spoke of the mystery of the human body and its functions. We know what we do: we know that we see things, we feel things, we do acts.

But immediately we begin to inquire into the why of all this, we are thrown back on the mystery of creation. "God created man in His own image and likeness."

It is quite possible that if the jury could have given a verdict then and there, they would have acquitted Palmer. But the eloquent serjeant was followed by Cockburn, who was no less eloquent, and twice as effective. For he argued the whole case through. He tore to tatters the theories of the doctors called for the prisoner. He showed up in its worst light the prisoner's conduct. Above all, he drove home the fact that on Monday and Tuesday the prisoner procured strychnine; that on Monday and Tuesday nights Cook was attacked by convulsions; and that Palmer had not either produced the strychnine or accounted for it.

Well might the prisoner say, after the fatal verdict, "It was the riding that did it." For Cockburn had, in preparation for his case, studied the whole science of poisons. He had read up everything that was to be found on the subject. And his brilliant and acute intellect had enabled him to administer the most searching cross-examination ever administered to medical men in an English court of justice.

To the last, Palmer denied his guilt. To one person he said, as already mentioned, "He did not die from strychnine." To his brother he said, "I have no blood-guiltiness."

Did Cook really die from strychnine poisoning?

There are some reasons against it: (1) Vomiting is not a symptom of strychnine poisoning; and we know that the broth sent over by Palmer on the Sunday caused Cook to vomit—that it also caused the servant who tasted it to vomit. (2) It is incredible that if strychnine had been administered on Monday night, Cook

should be alive on Tuesday morning, and fairly well in the afternoon. (3) A skilful analyst analysed the blood and viscera and various parts of the body, and found no trace of strychnia. (4) On the Monday night, Palmer administered pills, and the patient was sick immediately he swallowed them. (5) Palmer himself asked Mr. Herapath, who could detect  $\frac{1}{30000}$ th part of a grain, to examine and analyse for strychnine.

On the other hand, there is little reason to doubt that Palmer was poisoning his wretched acquaintance by antimony; because (1) antimony was found all over the body; (2) antimony would cause the vomiting; (3) antimony would cause a burning sensation, such as Cook experienced on Monday (November 12th) when drinking the brandy and water; (4) antimony causes spasms, or convulsions, of a short duration but tumultuous character (hence called *clonic* spasms, from *κλόνος* =tumultuous movement).

It is, however, proper to say that the symptoms in Cook's case, except (a) the recurrence, and (b) the vomiting, were as like Mrs. Smyth's as one case could be like another, and that was a clear case of strychnia poisoning. And, after all, the truth may be that the murderer—for murderer no doubt he was—began by using antimony, and when he found this was too slow followed it up, on the Tuesday night, by a dose of the more deadly and more sudden poison. A very small dose would be fatal, acting on a system already weakened by antimonial poisoning.

It is permissible, perhaps, to recall an incident connected with the trial. The case was generally known as "the Rugeley Poisoning Case"; and the good people of Rugeley became a little tired of the notoriety. Wherefore a deputation of them waited on Lord Palmerston,

the Prime Minister of the day, to urge that the name of their town might be changed. "Old Pam" heard them out; and then, in a tone of grave sympathy, thus addressed them: "Gentlemen, I have great sympathy with the object of this deputation. I shall have the utmost pleasure in advising Her Majesty to make the change you desire; and shall take the liberty of suggesting that instead of 'Rugeley,' your town shall be re-named after myself—'Palmerston.'"

## X.

### THE WITTY POLITICAL PARSON.

#### *Trial of John Horne Tooke for Libel and Treason.*

THE climate of Great Britain was, at the end of the eighteenth century, by no means a healthy one for the politician. For a long time the power of government had been in the hands of a close corporation composed of the great territorial families.

This state of things, brought about by the "great and glorious" Revolution of 1688, had lasted so long that people had come to look on it as part of the order of creation, when first the American Revolution and afterwards the French Revolution broke out. A handful of farmers defied the British power; the stateliest court, the haughtiest aristocracy, the most magnificent monarchy in the world, were suddenly swept away, leaving not a wrack behind. And certain people in the United Kingdom began to talk loudly of the Age of Reason and the Rights of Man. The British Government took the alarm. Prosecutions for seditious libel and high treason became common. One man was prosecuted for writing that the taxes were oppressive. Another, with magnificent impartiality, for declaring that the proper constitution of England was a monarchy. Spies filled the land.

But it was not to be expected that Britons would tamely submit to have their mouths closed.

John Horne was one of the stormy petrels of English public life in those days. In private life a man of irregular morals, genial wit, and charming personality; in public matters he was one of the most pugnacious persons that could well be imagined. As a young man at Cambridge, he mapped out for himself a career at the Bar, and actually entered his name as a student at the Inner Temple. But his father, a worthy tradesman of Westminster, had other views. He purchased a small benefice at Brentford, and obliged his son to take holy orders and be ordained priest at the age of 24.

If ever a man was unfit by genius and temperament for the ministerial office it was John Horne. He could not keep out of politics; and by the time he was 29 he had effectually killed all chances of preferment by publishing a gross but artful libel on Lord Bute and the Queen-mother. Naturally the young parson took the side of "Wilkes and Liberty"; and assisted that doughty political fighter in the celebrated Middlesex elections.

For a paragraph in a newspaper accusing Onslow, one of the Ministry, of corruption, Horne was sued for libel; but he managed to get home on a technical point. Soon afterwards Onslow brought another action, this time for slander; and Lord Chief Justice Mansfield, sitting at Guildford, decided against the defendant; but Horne appealed, and won. He did not forget to blow the trumpet in celebration of his victory.

Some six years afterwards, the sworn allies fell out. Horne attacked Wilkes, but Wilkes had his revenge by publishing some letters written to him by the young clergyman in the halcyon days of their friendship. Horne founded a society called the Society for Constitutional Information—of which more hereafter. He

canvassed against Wilkes when that worthy was a candidate for the office of Sheriff of London and Middlesex in 1771. But Wilkes was then so great a favourite that Horne became very unpopular.

In 1773 he resigned his living; and thenceforth did not dress in clerical clothes, but tried unsuccessfully to be called to the Bar.

In 1775, being then 39 years of age, Horne once more came prominently before the public. The war with the American Colonies had caused the greatest indignation amongst a large number of people in England, of whom Horne was one. He declared the war to be illegal; hence, he said, the troops who killed the colonials were murderers. And he inserted an advertisement in the *Morning Chronicle* asking for subscriptions for the families of those American colonials who had been "murdered by the King's troops." Upon this, he was promptly prosecuted for seditious libel by the Government.

The trial came on before Horne's old enemy, Mansfield; and the record of it is amusing reading. Mansfield, the Chief Justice, was a great judge—one of the greatest who ever adorned the English Bench—and it must be said that he bore with exemplary dignity and patience the outrageous attacks of the prisoner. For Horne was, as the Americans put it, "out for scalps." He had an idea that the Chief Justice had treated him unfairly in the Onslow slander case; he knew that he had upset the learned judge on appeal; and he assumed, from the very beginning, that Mansfield intended to be unfair to him.

Now the Reverend John Horne was no Quaker. He did not "turn the other cheek also." He did not even wait to be smitten on the one cheek. His habit was to



dash at his opponent in a fierce onslaught of insinuations, charges and invective. One is bound to say that the fiery clergyman thought more of the damage he inflicted on the adversary than of the precise fairness of his own methods of warfare.

Before Thurlow, the Attorney-General, could open his mouth, the prisoner interposed. The reader may be aware that in a criminal trial, when the prisoner calls no witnesses, the prosecuting counsel speaks at the end of the evidence for the prosecution; and the prisoner or his counsel replies on the whole case—a valuable privilege, as it gives the prisoner the last word.

To this rule, however, there is an exception, which is that where the Attorney- or Solicitor-General is appearing for the Crown to prosecute, he always has the right to the last word, whether the prisoner calls evidence or not. Some few Law Officers of the Crown have refused to exercise this privilege. The late Sir Frank Lockwood, when Solicitor-General, always declined it.

Now Horne saw a chance of a grievance; and, be it said, there is no more valuable asset to a prisoner on his trial than a good grievance. If he can but persuade the jury that he is being treated unfairly, his cause is half gained. So he took objection, at the outset, to the Attorney-General's right of reply. His argument was ingenious, and can be thus summarised:—The immemorial practice is to give the defendant the reply. Now an immemorial practice shows that this must be the best way of administering justice. Therefore any other way is not the best for justice. Therefore, to give the prosecution in any case the right of reply is not good for justice.

The Chief Justice, as Horne very well knew he

would, over-ruled the objection; and he did it without asking the Attorney-General to argue the point. This gave the wily prisoner his grievance to appeal to the jury. He accused the judge of "doing the business of Mr. Attorney-General for him." Mansfield, quite equably, told the prisoner that if there was any irregularity in the trial he could move the Court to set the verdict aside. "You have a remedy," the judge observed. Horne broke out passionately, "O, my lord, I have already suffered under your lordship's directing me to remedies! The most cruel of all poisoners are those who poison our remedies." This was rather strong, but worse was to come. Reminding the Chief Justice of the slander trial, Horne observed, "I am very patient under personal injuries"—a statement that showed either a very strong sense of humour or a total lack of it on the speaker's part—"I have never complained of the mistakes, to put it gently, which your lordship made. Then, as now, you told me I had a remedy——"

*The Attorney-General*: "I beg leave to object to this way of proceeding with a trial."

*Horne*: "First your lordship interferes to save Mr. Attorney from attempting to give a reason, which you both know he cannot give; and then Mr. Attorney gets up to save your lordship in his turn, and to stop me from *explaining your lordship's conduct!* Thus, between your lordship and Mr. Attorney, a defendant is in a blessed situation!"

Here, the report continues, there was some "promiscuous altercation." Lord Mansfield at last interposed with great sternness, "Mr. Attorney-General, go on with the trial."

Thurlow opened the case; and it must be confessed

that he did it with great dignity. In an eloquent passage, he said: "I should think I was stooping exceedingly below that character and that situation in the world I think I am entitled to if I were to set myself to defend my own peculiar part from any aspersions that have been thrown upon me. . . . To be told I stand here ready to take all manner of advantages, fair or unfair, against the delinquents whom I call into justice is a sort of aspersion below refutation, and I will not stoop to take notice of it."

The evidence was clear that Horne was the author of the alleged libel—indeed, he did not attempt to deny it. He amused himself during the evidence of Woodfall, the editor of the *Chronicle*, by asking whether the witness had not been requested from high quarters not to publish squibs on the Chief Justice Mansfield. And the speech of the prisoner in his own defence was no more to the point than his cross-examination. He talked for a very long time about the iniquities of the Government. He insulted his judge at every available opportunity; and he "chaffed" Thurlow with great good-nature. In fact, the Attorney-General and the prisoner at the bar were very good friends outside the court, and had spent many a jovial hour together.

At this time Wilkes was ex-Lord Mayor and an alderman; and he was sitting on the bench with Mansfield, laughing and talking. Horne turned on him—"I see on the bench another man who once charged the King's troops with murder. The judge and that gentleman have been laughing all the time of this trial. Well, gentlemen, it gives me great pleasure to think that if ever I am to come out of prison again (if you are so kind as to put me there), I, too, may have the honour of sitting cheek by cheek with a judge and laughing at

some other libeller. Gentlemen, I have wandered; though, if I am to be shut up, a few excursions before it may be excused me."

His speech was, however, by no means all jest. He defended his action in speaking of the killing of the colonials as murder. He declared that he would, whatever happened, always call it murder. He vowed solemnly that if the Attorney-General should prosecute every time he so spoke or wrote, the learned gentleman would have constant employment. And he exhorted the jury for upwards of three hours to strike a blow for liberty by returning a verdict of "Not guilty."

Mansfield summed up with a fairness the prisoner had little reason to expect after his disgraceful attack on that judge; and the jury did not hesitate to find the prisoner "Guilty." A year's imprisonment, a heavy fine, and to be bound over to be of good behaviour for three years was the sentence—a sentence not harsh, by the way, in those times and under those circumstances.

It was some years before the reverend politician was again in serious trouble; and it must be owned he had himself to thank for it very largely. By this time he had added the name of Tooke to his own; and had become famous as a philosophical philologist.

There were certain societies or clubs of a Radical political complexion in those days. One was the Society for Constitutional Information; another was the London Corresponding Society; and there were many of a similar kind in the provinces. These clubs were established to agitate for reform in the House of Commons, universal suffrage, annual parliaments, and the like. At some of their meetings, no doubt, a good deal of inflated rubbish was talked—stuff that would excite the laughter of the most ignorant audience in these days. The

members expended their energies in passing resolutions and drinking toasts or "sentiments," and occasionally corresponded with other societies of kindred aim.

But a spy managed to get elected to the Constitutional Society, of which the Reverend John Horne Tooke was a principal member; and Tooke soon saw that the man was a spy. Whereupon the reverend gentleman undertook to mystify and amuse the unwelcome member. Pretending to take a liking for him, Tooke confided to the spy that a great conspiracy was afoot to overturn the King and Government; that arms had been procured; that untold thousands all over the country were only waiting for him (Tooke) to give the signal, and they would rise as one man. Naturally enough, the spy retailed all this to his employers.

Then the reverend hoaxer perpetrated another hoax. He suspected that his letters were being opened at the Post Office. So he procured a friend of his to write a letter to this effect: "Can everything be made ready by Thursday?" As Tooke had suspected, this letter was opened, confiscated, and communicated to the Privy Council; and the next day a file of soldiers surrounded a house where the "conspirator" was dining, arrested him, and carried him to the Tower. The joke nearly cost its perpetrator his life; for he was confined in a damp room, and became very ill; and as soon as he was well enough, he was put upon his trial for treason. An accusation of high treason was a very serious matter in those days. The man found guilty of it was liable to be hanged, drawn and quartered. His possessions became forfeit to the Crown. And his very blood was declared to be attainted; so that none might inherit from him or through him.

Nevertheless, the trial of Horne Tooke was a very

merry proceeding. For the reverend gentleman's one aim was, by the keenness of his ridicule, to bring trumpery and far-fetched accusations of treason into disrepute. And more than once he discomfited the Crown lawyers by quip and jest to which their forensic talents did not furnish them with any reply.

It ought to be said that the Court, consisting of the Lord Chief Justice (Eyre) and four other judges, sat at the Old Bailey from the 17th to the 22nd of November, 1794. Counsel for the prosecution were Sir John Scott (afterwards Lord Eldon), Attorney-General, Sir John Mitford (afterwards Lord Redesdale), Solicitor-General, Edward Law (afterwards Lord Ellenborough), and other juniors. The prisoner had for his counsel Thomas (afterwards Lord) Erskine, Vicary Gibbs (afterwards Lord Chief Justice of the Common Pleas), and three juniors. The reader will observe that, thanks to the statute of 1746, Tooke was able to be defended by counsel on a charge of treason. Had it been murder or any other felony, he could not have had counsel. A stronger Bar never appeared at any trial in this country. Scott, though a little out of his element (for he was a Chancery lawyer primarily), was possessed of great industry, ability, and learning. Law had been counsel for Warren Hastings, and had successfully resisted the sublime invective of Burke and the moving eloquence of Sheridan. On the other hand, Erskine was the greatest orator of his own or any other time at the English Bar. His success with juries was amazing; and what he lacked in learning was amply supplied by Gibbs, his junior. The stake was liberty of political agitation; and the players were worthy of the occasion.

The defence scored a point before the trial began. By law, the prisoner had the right of challenging thirty-

five of those summoned to serve on the jury; while the prosecution had the right to challenge an unlimited number, but only for just cause shown. Now a custom had grown up of allowing the Crown to challenge without giving any reason; and Erskine allowed the Attorney-General to challenge and set aside a number on this occasion. Then the wily advocate used his own thirty-five challenges to such purpose that, in the end, there were only seven duly-qualified men left to serve. The attention of the Court was then called to the fact that the Crown challenges had all been without just cause shown, with the result that Scott had to give way, and five jurors went into the box with the pleasing sense of having been objected to by the prosecution as unfit persons.

It may interest the reader to be informed of the quaint phraseology of the indictment—a phraseology as old as the Common Law itself. Thus it began:—

“The jury on their oath present John Horne Tooke that he did, together with [several other persons], being subjects of our said Lord the King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but *being moved and seduced by the instigation of the devil*, as false traitors against our said Lord the King, their supreme, true, lawful and undoubted Lord,” and so on for nearly half-a-dozen pages of print of the size of this page. And the curious part of it was, that if “the instigation of the devil” had been omitted, or they had not been indicted as “false” traitors, or if the King had not been described as “supreme, true, lawful and undoubted” lord, the indictment would have been bad in law, and could have been objected to, and no court in the country would have allowed it to stand. The substance of the long rigmarole was that Horne

Tooke and others had conspired (1) to "stir, move, and excite rebellion and war" against the King; (2) to "subvert and alter the rule, legislature, and government"; (3) to "compass the King's death."

The means whereby these victims of Satanic influence had striven to accomplish their ends were (1) by calling together a convention of rebels who were to seize the Government; but previously (2) by writing and publishing treasonable and seditious pamphlets, resolutions, and other literature in order to "move, induce, and persuade" the lieges to send delegates to this convention; (3) by making and causing to be made arms, to wit "guns, musquets, pikes, and axes," for use in the contemplated insurrection; (4) holding treasonable meetings; (5) at such meetings passing treasonable resolutions and ordering the publication thereof.

The Solicitor-General opened the case for the Crown; and it is evident he did not quite relish the task. He laid down as propositions of law—(1) That to conspire to overturn the Government and depose the King was clear treason (by the way, nobody ever disputed it). (2) That to conspire to depose the King was the same as compassing the King's death (also agreed). But then he went on to contend (3) that if he proved that the prisoner and his friends contemplated a new kind of government—a government of King, Lords, and Commons, constituting any part of it differently to what it then was—that was an endeavour to subvert the King's Government; therefore an endeavour to depose the King; therefore compassing the King's death!

To put the proposition bluntly: The Government then included bishops in the House of Lords. An agitation to exclude bishops from that House would be an endeavour to alter the form of government. Therefore



it would be an endeavour to subvert the King's Government! Therefore, an endeavour to depose the King! And therefore—amazing conclusion!—an agitation to exclude bishops from the House of Lords would be an attempt to compass the King's death!

Granted his amazing premises, the learned Solicitor soon proved the reverend prisoner, who sat smiling the while, guilty of most manifest treason. The reasoning was this: The prisoner belonged to the Constitutional Society; the society had tried to have the franchise extended to all householders on a uniform basis; the society had tried to persuade others to agitate for the same purpose, and had called a convention of societies, which could only be to concert a plan of armed rebellion. Therefore, the whole society was guilty of trying to alter the form of government, and, "argal," of compassing the King's death. In order to prejudice the case as much as possible, Mr. Solicitor said he would show conclusively that a resolution had been passed approving of Paine's book, "The Rights of Man"; and did not everybody know that Paine was an atheist and a naturalised Frenchman? The society had also passed a resolution congratulating the French Republican Assembly on having driven the aristocracy out of France. Mr. Solicitor threw up his hands in holy horror! What clearer proof could there be that these men desired to depose and kill George III. of Great Britain and Ireland? Finally, the society had solemnly resolved, "That law ceases to be an object of obedience 'when it becomes an instrument of oppression,'" which sounds like a maxim out of a copy-book; but was, in the opinion of Mr. Solicitor, treason of the deepest dye.

Truth to tell, the prisoner did not seem to be much alarmed by these thunderings. And as soon as the first

of the prosecution's witnesses was put in the box, Mr. Solicitor and Mr. Attorney began to realise that they had met their match. This witness was the secretary of the Constitutional Society, and he produced the books thereof. In these books were numerous minutes of meetings, all beginning, "Present, Mr. Tooke, etc., etc.," and giving all the names of those present. The minutes showed that the proceedings had consisted of the passing of various resolutions of a political nature.

The reverend prisoner himself took this witness in hand. In silky tones he asked him: "Have you got the books of accounts of the society, or were they seized?"

A. "They were seized."

Q. "Do you recollect what was the sum paid yearly by the different members?"

A. "One guinea."

Q. "Was the society very rich?"

A. "Never, sir."

Q. "What sum of money do you think all the subscriptions might amount to in a year?"

A. "Sixty pounds."

Q. "How much of that went for the regular expenses of the society—secretary, room, paper, and ink?"

A. "At that time there might be about £50."

Q. "So that at that time there might be £10 a year to overturn the Government with?"

The witness's answer was not heard amidst the roar of laughter that shook the court-house. "My lord," said Horne Tooke, with grave face but with eyes twinkling, "I ask this merely to show the riches of the new Government."

The comical expression on the prisoner's face was too much for the gravity of the Chief Justice and his

brethren. They joined in the laughter; and from that moment Horne Tooke had little cause for anxiety.

After this effective bit of cross-examination, the genial parson persuaded the witness to say that on many occasions when the minute book said "Present, Mr. Tooke," Mr. Tooke had been present merely at the opening of the meeting; and had gone away before any business was done or resolution passed.

"What was usually the number of persons who met together at that society?"

"I should suppose not more than ten. There has been thirty; sometimes six, sometimes ten, sometimes twenty." The prisoner paused, looked at the jury, and then, with a humorous smile on his face, inquired, "Were they armed with pikes or muskets?" The jury roared again; for, be it observed, Horne Tooke was a man of 60 years of age, and of venerable appearance. Moreover, he was obviously a valetudinarian. And all the other people who had been mentioned as members of the society were men of middle life and notoriously respectable habits. The witness answered, "No, sir!"

"Were all the members of the same way of thinking?"

"I think not, sir."

"Were there sometimes debates?"

"Yes, sir."

"And sometimes contradictions of opinion?"

"Yes, sir, greatly."

"Great is the treason that is to attach to all!" exclaimed Horne Tooke; and again the jury laughed.

"You had no notion that any of the members had any idea of treason?"

"No, not of treason."

"Either to depose or kill the King?"

"Oh no!"

"Or to use force by arms?"

"No."

"Do you think they were either bold enough or strong enough?"

"No."

One witness after another was subjected to destructive cross-examination of this sort; but a rather more serious attempt was made by the Attorney-General in connection with a society at Sheffield. This society was about a thousand strong; and it was attempted to be shown that these people had provided themselves with arms with intent to rebel; and the Crown sought to connect the prisoner with the Sheffield society by proving that the London Constitutional Society had been in communication with the Sheffields. It was proved that at the Sheffield meeting speeches were made of a very inflammatory character—nowadays we should call them "extreme Radicalism"; but Sir John Scott called them treasonable and seditious. The orators of Sheffield appear to have been men who did not mince their words. "It was never believed that murder, rapine, and misrule were government, and that lawless and bloody-crowned robbers were governors divinely appointed," said one. "The sun of reason shall shine in its fullest meridian over us; then the commanding voice of the people shall recommend the 558 gentlemen in St. Stephen's Chapel to go about their business." "We are disgusted to hear the hallowed name of liberty made the sport of corrupt placemen"; and so on *ad nauseam*. But when the Sheffield witnesses were called, they let down the prosecution very badly. On cross-examination by Gibbs they stoutly denied any intention of overturning the Government by force. Asked,

"How were they affected to the King?" one stout Yorkshireman replied, "Why, as well as any people in England!" Another was asked about Paine's "Rights of Man," and averred that as to a great part of it, he did not understand it; and "what is more, I don't believe Mr. Paine understands it himself"—a declaration that did not fail to amuse the Court.

A characteristic incident occurred on the second day of the trial, when the prosecution put in evidence a letter addressed to Mr. Horne Tooke by one Cooper. The prisoner objected, "My lord, are the letters that are written *to* me to be produced against me?" The Chief Justice answered that they were; but that they would have no weight unless it was proved that something suggested in the letter had been acted upon.

*Tooke*: "My lord, my reason is that I am very much afraid I may, beside treason, be charged with blasphemy. My lord, I have several letters which I received from a man (and perhaps they will be produced against me) wherein he endeavoured to prove from the Bible that he was God the Father, God the Son, and God the Holy Ghost; and he did it in this way: His name was Oliver Verrall, and he signed his letters O. Verrall. Says he—God is Overall, that is O Verrall, and as I am O Verrall, I am He." Once more the Court shook with laughter, as Tooke proceeded: "If those letters are produced against me, I do not know what will become of me."

Than this instructive anecdote, no better way could have been found of bringing home to the jury the folly and the unfairness of trying to make a man responsible for letters written by other people. And, as most of the evidence against Tooke consisted of such documents, the case for the prosecution was considerably shaken.

So for two days the evidence went on, the Crown lawyers labouring to make bricks without straw, and the reverend defendant turning the whole case into ridicule. And when their case was closed, Tooke brought into the witness-box the most wonderful collection of witnesses who ever gave evidence for a prisoner charged with high treason. The radical Duke of Richmond, William Pitt, Charles Fox, Richard Brinsley Sheridan, one after another—a procession of eminent personages stepped in and out of the box for the whole of a long day\*—all to prove that the Constitutional Society was quite legal, and that the defendant was no supporter of methods of violence.

This evidence had been preceded by a magnificent speech from Erskine, who asked, in his most dramatic manner: "When is doubt and terror to be at an end? They [pointing to Scott] tell you they [the Constitutional Club] want to subvert and destroy the Government, and to set up a republic by destroying the King. Prove it, and I give up my client to your vengeance!" Alluding to the letters of Cooper and others, he cried: "How are men to defend themselves, if they have not only their own transgressions to answer for, but are to have heaped upon their heads everything done in every corner of the kingdom by persons with whom they have no connections? Where is the purse that is able to contend against such a prosecution? Where is the man capable of contending against it? And where is the tribunal with sufficient strength of body or mind to determine it? . . . It strikes me with horror! It is like the waves of the sea breaking in upon one! All is confusion, if you are to take the life of a man upon this evidence! It cannot be!" The effect of this striking

\* The Court sat for twelve hours each day.

passage, heightened as it was by the melodious voice, the expressive countenance, the flashing eye of the great orator, was tremendous.

The Attorney-General's reply was by no means a great performance. And what little effect it might have had was nullified at the outset by one of Horne Tooke's characteristic gibes. John Scott was, undoubtedly, a sincere man; and his feelings had been hurt by insinuations made by Erskine that the prosecution was trying to obtain a conviction at any cost. So he began his speech by protesting, with tears in his eyes, "I will say this in face of my country, that as I have never sought any situation in which I stand, otherwise than by the exertion of such talents as God has given me; so here I declare that I would not take one step in this prosecution repugnant to the dictates of my own judgment. . . . And when I am laid in my grave, my children, I hope, will be able to say that I left them public probity—dearer to them than any riches this country could give." Here the learned Attorney fairly broke down and wept. The Solicitor-General also applied his handkerchief to his eyes. Gibbs turned to Horne Tooke, and asked in an audible undertone, "What is the Solicitor weeping for?" "He's weeping," observed the prisoner, in an undertone even more audible, "to think of the d——d poor inheritance the Attorney's children will get." Which rather spoilt the pathos of the little scene.

The judge occupied a day and a half in summing up. The jury took exactly ten minutes to decide on their verdict. "Not guilty!" said the foreman, emphatically.

No sooner had the words left the foreman's lips than a roar, or rather a scream of joy, arose in the Court. A large crowd that had gathered outside caught up the

joyous sound. Such a scene had not been in London since the acquittal of the Seven Bishops. When Erskine and Gibbs came out to their carriages the populace insisted on drawing them to Serjeant's Inn ; nor would the crowd disperse until Erskine had made a speech from the window of his house.

Horne Tooke, for his part, passed the rest of his old age gardening at Wimbledon. He had done enough for Reform ; and had vindicated, at some peril, the right of political agitation.



## XI.

### A BAD PRE-EMINENCE.

#### *The Life and Trial of Charles Peace.*

THERE have been, here and there, criminals whose exploits and escapades have taken a strong hold on the public imagination. Indeed, there is something fascinating in the life of a man who, steadfastly defying society, sets his own keen wits the task of outwitting the forces of law and order. The sort of sneaking admiration almost involuntarily felt by the law-abiding citizen for the Dick Turpins, the Jack Shepards, and the Cartouches is akin to the feeling which prompts the crowd to cheer on "the little 'un" in a street fight. The odds are so much against the criminal that his boldness extorts something very like sympathy—that is, always provided that his crimes are audacious enough, and tinged with a spice of adventure.

Of all the men who, in our day and generation, have excited the interest of the public in this way, Charles Peace stands easily first. His audacious robberies; his daring escapes; his wonderful disguises; his reckless jump from the express train in a last attempt to escape his doom; all combined to make him a kind of criminal hero. Apocryphal tales were invented about him, just as, in bygone days, legends gathered round the names of Robin Hood and Rob Roy. I propose

to tell my readers something of this remarkable man—the King of the Burglars, as he has been called—to trace his career, and to show how he was brought to justice.

As to his personal appearance, the reader can easily see what that was like by paying a visit to Madame Tussaud's. A Sheffield gentleman of my acquaintance went there not long ago, and was startled to see, in the Chamber of Horrors, the effigy of a man whom he knew, long ago, as a hawker and trainer of singing birds, who was in the habit of vending his wares in Sheffield from a cart drawn by goats. The hawker was no other than Charles Peace.

The subject of this sketch was born in 1832, the son of a working shoemaker in Sheffield. He was sent to school by his father, but made little progress in learning. He was, however, popular with his school-mates by reason of a decided talent for carving and manufacturing toys. From school he went to work at a rolling mill; and while there was seriously injured by some hot iron or steel running on to his leg. A serious illness was followed by a long period of convalescence; and it was during this time that the embryo criminal developed the taste for music that formed one of the curious features of his character. He learned to play the violin; and learned so quickly and played so well that, after his recovery, he was in great demand at concerts and other musical gatherings. On at least one occasion he had an engagement at a theatre, and was billed as "the modern Paganini." His performance consisted of playing on a single string.

I do not know when first he became dishonest; but he was first detected in 1853—housebreaking—for

which he was sentenced to a month's imprisonment. As very often happens, he emerged from jail a confirmed and unabashed criminal. He associated thenceforth chiefly with men "known to the police." He abandoned fiddling as a means of livelihood, though he still played for hours at a stretch for his own amusement. Burglary became his trade. Three times in as many weeks he broke into houses in Sheffield, and stole jewellery and plate; and on the third occasion he was caught. Four years' penal servitude was the punishment.

On his release, he wandered about the North of England, fiddling and thieving, until in 1857 or 1858 he met and married Hannah Ward, with whom he settled down in Manchester. He supported his wife and family by burglaries numerous and daring; and contrived to evade capture until 1859, when he was caught red-handed, and sentenced to six years' penal servitude. Good conduct in prison earned him his release in 1864, when he returned to Sheffield and set up a shop; but in 1866 he was back in Manchester again at his old trade of thieving. Ten years' penal servitude was his next sentence.

While undergoing this tremendous punishment, Peace brought on himself a punishment yet more terrible. He assisted in a mutiny in the prison—probably he was the ringleader. When the rising was suppressed, the wretched man was sentenced to be flogged; and flogged he was, without mercy, until he bled under the lash. I am not one of those who believe that you can maintain discipline in a convict prison by the same methods as you ought to apply in a Sunday school. But I am never surprised to hear of a man who has tasted penal servitude

and been flogged to boot turning savage. Penal servitude and flogging may be deterrents to others, but that they have any but a brutalising effect on those who suffer them, no sane man can believe. After a man has been imprisoned for five years, in penal servitude, it would, in most cases, be an act of humanity to keep him under lock and key for the rest of his life. It would certainly be better for Society. The man is either broken and useless, or becomes a beast of prey. The effect on Peace seems to have been to make him resolve rather to commit murder than to be caught again.

For some reason, never explained, Peace's sentence was reduced from ten to six years. In 1872 he went back to Sheffield, and lived with his wife and children. He carried on—ostensibly—the trade of a picture framer; but little did his customers imagine how he spent his nights. Apparently he was a reformed character. Really he had added hypocrisy to his other vices. He gave little parties, when he played hymn tunes on his violin. His children attended Sunday school. And the tune books, and the respectable clothing of the children, were paid for by the proceeds of skilful burglaries.

In a short time he removed to Darnall, a pretty village suburban to Sheffield, and soon became noted for his musical parties, his stock of canaries, and his collection of musical instruments. It may be stated that many a wealthy amateur in Hallamshire had to bewail the loss of a favourite violin or 'cello about this time.

At Darnall there lived a Mr. Dyson, a civil engineer, who had once resided in America, where he married. Peace became enamoured of Mrs. Dyson, and success-

fully attempted to become on friendly terms with her. After a time Dyson became uneasy and annoyed, and he wrote on a visiting card, "Charles Peace is requested not to interfere with my family." This card was thrown into Peace's back garden, and picked up by him.

The amorous fiddler-burglar was dreadfully incensed. He forced his way into the Dysons' house, and threatened Mrs. Dyson with a revolver. He tried to trip up Dyson the next time he met him in the street; and, generally, acted in such threatening style that the Dysons were completely scared. They complained to the police, and a warrant was issued for the arrest of Peace. But Peace heard of it, and escaped to Hull. Dyson, in the meantime, had arranged to change his residence, from Darnall to Banner Cross—a sparsely-populated district in Eccleshall, which is the first village out of Sheffield on the road to Grindleford Bridge. The spot was a lonely one at that time.

The change was made on the 25th of October, 1876. But if it was made with intent to shake off Peace, it was entirely unsuccessful; for on the very day of the removal he invaded the house in Banner Cross Terrace, and (according to her story) pestered Mrs. Dyson with his unwelcome attentions. Then he returned to Hull; and on his wife and daughter remonstrating with him about Mrs. Dyson, turned them both out into the street. The wife promptly set up a cook-shop in the town.

On the 28th of November, he turned up at Banner Cross once more; and it is obvious that his friend did not receive him kindly. For the next day we find him seeking an interview with the Vicar of Eccleshall. He poured into the ear of that worthy clergyman a long

rigmarole about the bad character of his new parishioners, the Dysons; declared that they were a bad lot; and that they had wrecked his (Peace's) happiness. The vicar, who thought he had to deal with a lunatic, spoke as gently and soothingly as he could, and showed his visitor the door at the earliest possible opportunity.

All that day, Charles Peace lurked about Eccleshall. When night fell, he made his way into the Dysons' back yard—an easy matter. The houses at Banner Cross Terrace were built in a row in pairs. Between each pair was a passage, the sides formed by the walls of the houses; and at the end of the passage were doors to right and left, giving access to the back yards of the respective houses. At about eight o'clock, Mrs. Dyson came out into the back yard to go to an out-house, and was at once accosted by Peace. What he did or said to her never came out; but it is certain that she screamed. Her husband came running out of the back door. Peace made for the passage. Dyson followed. Peace turned round, revolver in hand, and fired a hasty shot that hit the top of the wall over the door. A second time a report rang out, and this time Dyson fell, shot through the head. The wound was instantly fatal.

The explosions of the pistol, and the repeated screams of Mrs. Dyson brought up the neighbours; but long ere they appeared the murderer was away. Running across the road, he leaped a low wall, dropped into a field, and, favoured by the darkness, disappeared.

What followed shows the extraordinary nerve and coolness of the man. He knew that in a few minutes the Sheffield police would know that Charles Peace had

committed a murder at Banner Cross. He formed his plans accordingly. He reasoned thus: They may keep a watch for me along the Eccleshall Road, and the bye-roads leading from Banner Cross (which is to the south-west of the town) to Sheffield. They may also block the roads to Derbyshire and Lancashire. But they will never expect to find me in the very middle of the town.

Acting on this calculation, the murderer cut straight across the fields to Crookes—a suburb at the north-west of Sheffield; then walked boldly towards the town. But coming to a cab-rank at Broomhill, he hired a four-wheeler to drive him to the parish church gates—the very middle of Sheffield. Here, while a couple of policemen looked on, he dismissed his cab, and made the best of his way to the house of a relative, where he changed his clothes.

Secure in this respect, and confident in the disguise afforded by a change of face, the hunted man marched boldly past the Town Hall and the Chief Constable's office, and walked north to Rotherham. Meanwhile, the police watched the south-west roads, and scoured the ways into Derbyshire and to the West.

After a rest at Rotherham, Peace walked to the Masbrough Station. Here, in order to baffle the police (provided they should trace him so far) he took a ticket for Beverley. The idea was that if the police made inquiries they should find he had booked for Beverley; upon which they would telegraph to Beverley to inquire whether, on the 29th of November, a ticket from Masbro' to Beverley had been given up. If the answer was, "No," then the police would be baffled again. In fact, the wily criminal only used the ticket as far as

Normanton. At Normanton he bought another ticket for York. At York he waited two days, lying very low indeed; and then he again booked for Beverley; and this time actually went thither. From Beverley he easily tramped to Hull.

Here he had the first of the narrow escapes that gave his story such a romantic tinge. He marched to his wife's eating-house, and ordered her to get some dinner ready; but just as the meal was ready, a Hull detective dropped in. He had come, not because he imagined that the murderer would be there, but to "pump" Mrs. Peace. The hunted man fled upstairs, opened a window, and climbed to the roof. The detective did not remain long; for Mrs. Peace denied all knowledge of her husband; and as soon as he had gone, Peace came down and calmly ate his dinner. But the detective had forgotten to obtain certain information, and came back; and once more the master of the house was compelled to take to the roof. This time, he did not come down until it was dark.

Having made up his mind that the cookshop was not quite healthy, he disguised himself as a hawker, made himself look like a mulatto, shouldered a basket, and took lodgings in a neighbouring street for a few days. The secret of his success was, very largely, his faculty of changing his appearance. One day in Hull he was walking with his ordinary face on, when he suddenly blundered almost into the arms of a constable who knew him. The officer gave chase. Peace fled like the wind; dodged down a side street and up another, threw his hat up a passage, donned a cap that he carried in his pocket, turned round, and walked past the officer, who did not recognise him in the least. Well he might not. For the man who ran away was



an active man in the prime of life. The man who walked past was a person of about sixty. Moreover, the man who ran away was a European—the man who walked past was a mulatto! How he did it nobody ever knew. Certain it is that he could, in a few seconds, give his face a semi-negro appearance, with thick lips, broad nostrils, and, stranger still, a complexion with a “touch of the sun” in it. And his counterfeiting of the gait of an old man was a triumph of acting that would have made envious the most consummate artist on the stage.

Still, the adventure was quite as close a shave as Peace could afford. So he improved his complexion with a little walnut juice; and started on his travels. For about a month he plundered West Yorkshire and East Lancashire, disposing of his booty nobody knew how. During this time, also, he carefully bleached parts of his hair, so as to give a grey appearance to his head. So confident was he in his disguise, that he went one day to a police-station, and, under the nose of the force, calmly perused the bill offering a reward of £100 to anybody who should give information leading to the arrest of Charles Peace—who was there fully described. And on one railway journey to Manchester, undertaken for professional purposes, he chose to get into a carriage along with a police sergeant, with whom he chatted affably the whole way. There may have been a good deal of villainy, but there was undoubtedly much humour in the composition of this burglar and murderer.

Early in January, 1877, the hardy outlaw found himself in Nottingham, lodging in a low quarter called Narrow-Marsh; and here it was that he took the step that eventually led to his undoing. Conjugal

fidelity was not his strong point; and he picked up a woman named Thompson, with whom he lived thereafter, lavishing on her fine dresses, money, and jewellery. For all these the good townsfolk of Nottingham paid in the usual way. A big silk-factory robbery, in which the arch-thief carried off £300 worth of silk, nearly brought about his arrest. The Nottingham police somehow picked up a clue, and visited the Narrow-Marsh lodging-house in the small hours of the morning. It is a favourite device to catch suspects in bed, because they cannot escape or resist. Two stalwart detectives marched into Peace's bedroom; and the heart of the hunted man must have been in his mouth. Yet his extraordinary coolness did not desert him. Sitting up in bed, he opened on the officers before they had time to speak. "Who the —— are you?" he said. "You drunken ——, to come into my bedroom! Get out, or I'll —— well get up and chuck you out!" The officers, rather taken aback, became a trifle apologetic. They explained that they were of the police, and had come to inquire who he was. With curses both loud and deep on the pair of them for daring to outrage the modesty of his wife, Peace told them his name was Bailey, and he was a hawker. This was a masterly move. The officers said that if that was so, he would have a licence. Let him produce it, and they would withdraw.

"Do you think I sleep with my licence?" angrily demanded Peace. "It's downstairs. Here, missus, you get up and fetch it, and show it to the ——." Move number two. "Missus," of course, expressed a wish not to make her toilet in the presence of two strange men; and the detectives courteously withdrew. Before withdrawing, however, they saw that

the windows were barred with iron bars between six and seven inches apart. No sooner had the guileless couple retired to the landing than Peace darted up. Hastily donning his clothes, he threw open the window, squeezed between the bars, climbed up a spout, crossed a few roofs, climbed down another spout, and (most skilful move of all) went back down the same street to the house on the opposite side of the road.

What the Nottingham detectives said to each other I have no means of knowing. As it was, they did not know they had so narrowly missed the Banner Cross murderer.

From Nottingham the desperate villain, doubled back to Hull, with Mrs. Thompson in tow; and, as if his conduct had not been impudent enough up to that time, he took her to lodge with him at the house of a policeman. From this centre he pillaged Hull without mercy. In fact, he established quite a reign of terror there; and the Hull police were convinced that a large gang of the most skilful London practitioners were at work. All the common lodging-houses in the town were searched for traces of them; but nobody thought of suspecting the sexagenarian half-caste who lodged with the policeman. So excellent was Peace's disguise at this time that his own wife and family did not know him. After about two months' stay, the burglar wound up by ransacking six houses in one terrace on the same night; and by plundering the residence of a town councillor of all its silver, jewellery, and the costly apparel of Mrs. Town Councillor. In this, the last exploit in Hull, Peace was caught by a constable as he was coming out of the house; and it was here that he showed what a thoroughly desperate ruffian he had become. For when the officer said, "Stand!" the burglar

drew a revolver and fired. True, he fired wide, but the policeman was not slow to take the hint, and saved Peace from the guilt of another murder by running away.

Next day, the policeman-host was informed by his lodger—for whom he had grown to have the highest esteem—that Mrs. Rodgers and himself must go to Newcastle to live, for business reasons. Tickets were accordingly taken to the northern city; but Peace and his mistress left the train at York, and booked for London. And that is how, in the spring of 1877, the King of the Burglars came to the scene of his last exploits.

At first, he lived in Lambeth, in a mean house, where he used the front room as a shop, and sold musical instruments and curiosities—the price of which was all clear profit to the seller. Little did the neighbours imagine that the newcomer was the most dangerous, because the most adroit, criminal of the nineteenth century. He was quiet in his demeanour; inoffensive in his manners; and obliging to his neighbours, who rather pitied the sober, elderly man with the drunken wife—for Mrs. Thompson could not resist the temptation to drink.

After about six months, “the Thompsons” gave up their house in Lambeth. Peace had, in the meantime, taken the extraordinary step of bringing up to London his real wife, the faithful Hannah, who lived in the same house with her lord and master, and bore with patience his infidelity. Mrs. Thompson was not content to live in the back streets of Lambeth; she aspired to social position. And Peace allowed himself to take a good, suburban villa at the Blackheath end of Greenwich. Here, still under the name of Thompson, he lived with

his strange household. Mrs. Thompson was his wife. Mrs. Peace was Mrs. Ward (her maiden name), a relative. In the more exalted society of Blackheath the burglar displayed much the same qualities as had endeared him to his neighbours at Darnall. People called; they were invited to dinner, and to musical "At Homes"; and Peace's sense of humour was tickled as he played to them on one of his numerous violins. Indeed, he acquired quite a local celebrity as a musician; though some people were inclined to laugh because "old Mr. Thompson" would only play secular airs under great pressure. He preferred, he said, sacred music. Very naturally, so accomplished and hospitable a man found his hospitality returned; and many invitations to suburban festivities flowed in on the Thompsons—"ask Mr. Thompson to bring his violin." Mr. Thompson invariably accepted; and took, not only his violin, but a pair of sharp eyes, which noted the topography of the houses, the fastenings of the doors and windows, and the quality and quantity of his host's jewellery and plate.

Ere long, a perfect epidemic of burglaries broke out in Blackheath. One after another of the Thompsons' friends had to bewail the loss of silver and jewels. One unlucky man had peculiarly bad luck. The burglar, well acquainted with the house, crept softly upstairs, abstracted the sleeping householder's keys from the pocket of his trousers, unlocked the safe, and rifled it at his leisure. When Mr. Thompson was informed of these misfortunes, his sympathy was beautiful to behold. To one of his "burgled" friends he promptly offered, in the most delicate way, a loan if it would be any convenience to him.

Peace was now at the apex of his fortunes. He

removed from Greenwich to a larger house at Evelina Road, Peckham; and—symbol of respectability!—started to keep a gig. This he used for the purpose of driving out to survey the ground, and also of bringing home the plunder. Occasionally he went farther afield; but, as a rule, he confined his operations to South-east London, where his continued success caused something like a reign of terror amongst the better class of householders. Letters to the press reviled the police for not suppressing “this gang of audacious thieves.” Meanwhile the writers of these indignant epistles continued to visit and be visited by the musical, pious Mr. Thompson. But well says poor Richard: “The pitcher goes oft to the well, but the pitcher at last may be broken.”

On the night of the 10th of October, 1878, Police-constable Robinson was patrolling St. John's Park, Blackheath, when he observed a light in the dining-room of a Mr. Burness's house. As the hour was 2 a.m., and the rest of the house was in darkness, Police-constable Robinson ran to another constable (Young), and asked him to come and help. The two men sat on the garden wall and watched for about forty-five minutes, when a sergeant came up, whom they informed of their suspicions. The sergeant (Brown) made his dispositions with great promptitude. Ordering Young to the end of the avenue, and Robinson to keep watch from the wall, the superior officer stepped to the front door and rang the bell. Immediately the light went out; and in a minute, or less, the dining-room window opened, and a man stepped out and started on the run. Robinson dropped off the wall and gave chase. As he gained on the fugitive, the latter heard him; and, turning round, fired a shot from a revolver. But this time the burglar had to do with a man of mettle. Robinson never

stopped in his rush. Five times the robber fired, and the fifth shot told. But still the plucky constable stuck to his man, closed with him, drew truncheon, and struck hard. On the noise of the shots Brown and Young ran towards the scene ; and arrived in time to find Robinson, bleeding, and almost exhausted, still grappling with the foe, who was nearly half-stunned.

Next morning the London papers told how a man of about fifty, a half-caste, who refused his name, had been brought up at Greenwich, charged with burglary and attempted murder. The police scoured the neighbourhood ; and in less than a week discovered that three days after the arrest the Thompsons, of Evelina Road, Peckham, had taken flight to the north, carrying with them all their goods and chattels. Mrs. Thompson was traced ; and, under threats, "gave away" all she knew. She informed the officers that the "half-caste" was one John Ward, and was, in his own person, the "gang that had for over a year infested South-east London." The police were overjoyed. But more was to follow. Mrs. Thompson, in searching the belongings at Evelina Road after her "husband's" arrest, had come across evidence which led her to believe that the man she knew as John Ward was no other than Charles Peace, the man who was "wanted" for the Banner Cross murder. She promptly informed the police of her discovery. There are degrees of baseness.

An officer who knew Peace arrived from Sheffield. He identified his man at once ; and a constable set off post-haste for America, where Mrs. Dyson now lived. Meanwhile "John Ward" was brought up at the Central Criminal Court, and sentenced to penal servitude for life for the attempted murder of the constable Robinson at Blackheath.



'ON THUNDERED THE EXPRESS' (p. 185).





Early in January, 1879, the Sheffield policeman returned with Mrs. Dyson from Cleveland, Ohio; a *habeas corpus* was issued, and, on the 16th of January, two warders accompanied their prisoner from Pentonville Prison to Sheffield, to the police-court inquiry into the Banner Cross murder. After hearing the evidence, the magistrate adjourned the case for a week, to enable the prisoner's solicitor (Mr. Clegg) to prepare a cross-examination for Mrs. Dyson. The prisoner was taken back to Pentonville, and, the next week, was again taken down to Sheffield by the two warders. The three of them travelled by the newspaper train from King's Cross, timed to arrive at Sheffield about 9 a.m.—an express train that was usually well up to time.

It was during this second journey that Peace executed a plan that he had carefully matured before setting out—a plan as bold as it was simple—a plan that proved how much more able was this man than the others of his tribe. As the train neared Darnall, Peace observed to the warders: "That's Darnall, where I used to live. Open the window, and let's have a breath of air." One of the warders, with the consideration invariably shown to men in custody on a capital charge, threw open the window. Without the slightest warning Peace leaped through the opening; and might have got clear away but for the junior warder, who, seeing his prisoner's legs disappearing through the window, made a grab and caught hold of one foot.

On thundered the express. The prisoner, struggling, and kicking with his one free foot, hung from the window. The junior warder tried to haul him up, while the senior warder vainly endeavoured to pull the communication cord. The warders shouted. Peace swore viciously, and kicked until with his heavy boot he

had lacerated the hand and arm of the junior warder. Just then a passenger in the next compartment heard the noise, looked out of the window, and saw enough to cause him to pull the cord. The alarm bell sounded. The warders breathed again. But just at that moment the junior warder fell backwards into the carriage, with an empty boot in his hand. The murderer had escaped again.

The train was running at such a speed that it was two miles ere it could pull up. As soon as it did so, however, the warders dashed out and ran along the line. There was snow on the ground, and they hoped to be able to pick up the tracks and run their man down. To their infinite relief, when they reached the spot where Peace had vanished through the window, they found him lying, insensible, on the ground between the "up" metals. Almost as soon as they reached him he sat up, looked round, grinned at the warders, and merely said: "It's very cold. Cover me up."

The excitement caused by this almost successful attempt at escape was tremendous. And, indeed, the country had been perilously near having let loose upon it the most dangerous of all the midnight plunderers. The prisoner had fallen on the metals and sprained his ankle, besides cutting his head a little. The pain of the sprain caused him to faint; but it was a mercy the warders came up when they did. The gods are sometimes on the side of law and order.

This was the last adventure of Charles Peace. He was tried at Leeds on the 4th of February, 1879, found guilty, and sentenced to death. He made no attempt to deny his identity, or that he shot Dyson. His defence was that Dyson attacked him, that there was a scuffle, and that the revolver went off in the struggle.

On this theory, Mr. (afterwards Sir) Frank Lockwood made a valiant effort to procure a verdict of manslaughter, but to no purpose, for there was the fact that Peace had, many times, expressed ill-will towards the Dysons, and was a desperate character, and this it was that hanged him.

The King of the Burglars made an exemplary end. He would not give up the names of the "fences" who had assisted him to get rid of his booty. But he listened eagerly to the chaplain; and, while protesting that he never intended to kill either Dyson or Robinson, admitted that he had led a bad and wicked life, and expressed his deep sorrow. He made a speech of a canting kind on the scaffold—a speech obviously delivered for effect; and so perished.

While awaiting execution, Peace confessed that he had murdered a policeman at Whalley Edge, near Manchester, in August, 1876. For this crime three brothers, named Habron, were arrested. Two of them, John and William, were committed for trial; and one, William, was found guilty and condemned to death. The evidence in the case was purely circumstantial, as evidence in murder trials usually is. When a man intends to shoot a policeman he does not, as a rule, summon the neighbourhood to see him do it. But there is no doubt that the case against William Habron was "built up," in a way distinctly discreditable to those who had to do with it. He was reprieved, on the ground of his youth; and Peace's confession brought about his release.

There are those who believe that Charles Peace was responsible for several murders other than those at Banner Cross and Whalley Edge. For my own part, I am even doubtful whether the Whalley Edge one was

his. Except his own word, there was no evidence of it. Not, of course, that William Habron did it—I do not for a moment suggest that. But this is certain, that Hannah Peace, when she heard of the Whalley Edge confession, denied that her husband was out on the night that crime was committed; and there was, at the time, strong evidence obtainable in Darnall that Peace was seen there at such an hour as would make it improbable in the last degree for him to have been at Whalley Edge when he said he was. I admit, on the other hand, that there was little apparent motive for Peace's confession, except the desire of a dying man to do an act of justice. But may not his untutored imagination have suggested to the condemned criminal that it might be better for him in the next world, if not in this, if he could set free a man who, after all, was the victim of a miscarriage of justice?

Charles Peace was a man of considerable gifts: of that there can be no doubt. As a detective he might have been the greatest ever known in England. As an actor he should have succeeded admirably. Even as a soldier he might have done well—for he possessed imagination, the first essential of strategy. It was this imagination which enabled him to elude his enemies, the police, so often and so easily. He could always imagine what their next move would be; and make his own accordingly. It was this imagination which led him into a series of exploits such as no criminal ever accomplished in England before, and, I sincerely trust, none will ever accomplish again.

One sign of his intelligence in his nefarious calling was that he never lived (except for a short period at Nottingham) in common lodging-houses, or other places that the police habitually keep an eye on, and where

"copper's narks"\* abound. Moreover, he invariably operated alone. He never used false keys; but was an adept at forcing window catches and cutting out pieces from the panels of doors. He dealt with jewellery by the method of taking out the stones and melting the metal in a crucible at home. These precautions, combined with his respectable appearance and mode of life, kept him immune for a long time; and it was only the magnificent pluck of the Blackheath constable that brought to book England's most dangerous, because most intelligent, criminal.

\* *Copper's nark*—policeman's nose—a thieves' slang term for a police spy. In all great towns there are members of the criminal classes who eke out a miserable existence by spying on their fellows. Commonly, the newspaper phrase, "the police picked up a clue," means that some "nark" had put the police on the scent of the criminal.

## XII.

### THE PATRIOT.

#### *The King v. Hampden.*

NOT the least important landmark in the long struggle between despotic power and parliamentary government is the case of the King *v.* Hampden.

Charles I. was not a bad man, as was his son, Charles II. He was religious. He was a good husband and father. He was probably sincere in trying to govern his country well. But he believed with all his heart in the Divine Right of Kings; and the very sincerity of his belief was his ruin. Moreover, he fell into the hands of counsellors the very worst that a king could have—men who urged him to extreme courses; who persuaded him that he was always right; who represented the country party as a mere faction of selfish and unscrupulous fanatics and intriguers; who advised him, on all occasions, not to give way.

Not only this, but these counsellors were bad managers. They wasted the substance of the State. Every kind of tax and imposition known to former times was levied with the greatest strictness. Tonnage and poundage, compulsory knighthood with compulsory fees therefor; duties upon merchandise; the last penny of the feudal dues; all these were exacted. Yet the King was none the richer. Says Clarendon, "The envy and reproach came to the King, the profit

to other men ; insomuch that of two hundred thousand pound drawn from the subject, scarce fifteen hundred came to the King's use or account." Even the South African Stores Department was hardly so bad as this.

Expedient after expedient was adopted. Money must be had somehow. For in those days the phrase "the King's revenue" covered everything that was paid to the State. Out of his own revenue the King was obliged not only to keep up his Court, but to pay the judges, maintain the navy, and, in short, to support every public charge.

At length, in their distress, the King and his advisers turned to Sir William Noy, the Attorney-General, and asked him if he could suggest any legal way of raising money other than those ways that had been tried already.

Now Noy was a man of great learning. He had not sought the office of Attorney-General ; it had been thrust upon him. For he was reputed the most learned lawyer of his time ; and despotism ever seeks able instruments. A man of outstanding ability has a much better chance of rising under a despotic than under a democratic government.

Mr. Attorney cogitated for a long time. At last he recollected to have read of an instrument which, in former times, had been used on occasions of danger to the country. This was a writ (or order in writing) directed to the sheriff of every maritime county, commanding him to send to a particular rendezvous a ship, duly fitted up, manned, victualled, and armed at the expense of the county. In this primitive way our forefathers raised those fleets which first made England supreme at sea.

But Charles did not want ships. He already had



a navy. He wanted money. Moreover, the kingdom was in no danger of foreign invasion; nor was any naval war pending. But it was an undoubted rule of law that in matters pertaining to the defence of the realm the King was supreme. He had only to declare the existence of danger from a foreign foe, and no one could question his declaration. Therefore, if his Majesty proclaimed danger, he could at once levy ships from the maritime counties. So far, so good.

But, said Noy, it matters not to the subject whether he pays in goods or in money. Suppose the Sheriff of (say) Yorkshire, having collected contributions for building, equipping, and manning a ship, instead of building or buying and fitting up a vessel, sends the money to the King, for the King to procure a ship of war—where is the harm? Where is the difference? And suppose that after the money has been paid to his Majesty, the danger to the kingdom should blow over—is the King to be bound to buy an unnecessary ship? “No!” said Noy, “certainly not; for that would be to waste the contributions of the lieges.”

The courtiers and the councillors belauded their Attorney-General to the skies. They saw in this plan—to use the expressive language of Clarendon—“a spring and magazine that should have no bottom, and an everlasting supply for all occasions.”

So it befell that in 1634 a writ was issued to the sheriff of every maritime county, commanding him “to provide a ship of war for the King’s service and to send it, amply provided and fitted, by such a day to such a place.” And, as no war was either in being or likely to be, the preamble of the writ stated that the kingdom was in great danger from pirates.

This was quite legal and proper. But to every

sheriff was sent, along with the writ, a letter. And the letter ordered him to collect money for the ship, and then to forward the money to the King's treasury.

The device was eminently successful. From Yorkshire alone £12,000 came in. And the writ of ship-money, as people called Noy's invention, aroused no opposition.

After the tax had been collected, however, and it was seen that the money was not applied to naval purposes, some began to murmur.

But the King and his advisers were too jubilant to notice this. The bottomless "spring and magazine" had been discovered. Now for a way to tap its resources still further. Noy died in August, 1634; and, deprived of the counsel of "that great Gamaliel of the law," the Court party tried an extension of the Writ of Ship-money. In 1635 they framed a writ addressed, not only to the maritime towns and counties, but also to the inland towns and counties. The reasoning was good enough. Clearly (they said) the suppression of pirates was a service beneficial to the whole realm. Therefore it was but just that the whole realm should pay for it. Why should the coastwise inhabitants bear the whole charge?

They forgot, or disregarded in their greed, the very essential fact that the charge for ships on the maritime towns and counties was sanctioned by precedent—precedent of very ancient date—but there was no precedent whatever for compelling the inland places to furnish the means of naval defence. But first Sir John Finch,\* then Chief Justice of the Common Pleas, went

\* This is the John Finch, formerly Speaker of the House of Commons, who refused to put a motion to the House, and was held in his chair by Holles and others while the Commons passed a remonstrance to the King.

about to each of the judges privately, and procured each of them to sign an opinion that "where the whole kingdom is in danger (of which his Majesty is the only judge), there the charge of the defence ought to be borne by the whole realm." (November, 1635.)

The reader will observe that this opinion does not say that the King might, of his own authority, levy the charge; only that the charge ought to be borne by all. The whole point was, of course, whether the King could, without Parliament, levy the money himself.

One of the writs of ship-money was sent, in due course, to Buckinghamshire; and the Sheriff of Bucks proceeded to assess the amount to be paid by each resident and landowner. Amongst others, there dwelt in the county John Hampden, a squire with extensive estates, and of good family. Hampden had sat in Parliament, and had been noted there for the moderation of his views, the staidness of his behaviour, and his sympathy with the Opposition, or country party. Outside his own county he had not, at this time, acquired any very special reputation.

But when the Sheriff of Bucks required of him the payment of ship-money, John Hampden took a step which placed him at once in the front rank of his countrymen, and gave him a claim to their everlasting gratitude.

He refused to pay; and announced his intention of contesting the legality of the imposition by every means known to the law. Nothing could move him from his determination. He did not bluster; but he stood firm. This, he said, was a new tax; and there could be no new tax levied except by Parliament.

Thus it came about that he was sued in the Court of

Exchequer for the sum of twenty shillings, being the amount chargeable on one of his estates; and, after much legal preliminary skirmishing, the matter came to be argued on the 6th of November, 1637.

The King's advisers felt pretty sure of their ground; for the King had taken the precaution of taking the opinion of the judges in writing so early as February, 1636. He had sent them a Case for Opinion; asking them to put such a weapon in his hand as should effectually overcome all resistance.

*Case.*

CHARLES REX.

When the good and safety of the Kingdom in general is concerned and the whole Kingdom in Danger, whether may not the King by Writ under the Great Seal of England command all subjects in this Kingdom, at their Charge, to provide and furnish such Number of Ships, with Men, Victual, and Munition, and for such time as he shall think fit, for the Defence and Safety of the Kingdom from such Danger and Peril, and by Law compel the doing thereof, in case of Refusal and Refractoriness; and whether in such case is not the King the sole Judge both of the Danger, and when and how the same is to be prevented and avoided.

C. R.

This case was enclosed in a letter signed by the King in which he set forth the necessity of strengthening the navy, and informed his "trusty and well-beloved" that out of his "princely care" for the safety of his kingdom he had issued writs (commonly called writs of ship-money) to all the counties. And it had occurred to him that probably some disputes might arise; and as lawsuits were a long business, he thought it advisable to take the judges' opinions beforehand!

The Lord Keeper (Lord Coventry) and Finch, the

new Chief Justice, laboured hard with the judges ; and at last procured them to sign an opinion that the King might issue such a writ when the whole kingdom was in danger ; that such a writ would be enforced by law ; and that the King was the sole judge both of the danger and the means of defence.

The reader will observe that in this case the point for arbitrary taxation is put more boldly than before. It is asked whether the King can levy the charge by writ under the great seal—that is, by a mere act of his own will. And the judges, by delivering an opinion in the affirmative, had really decided Hampden's case in advance.

From the 6th of November to the 18th of December (with considerable adjournments) the point was argued in the Exchequer Court and the Exchequer Chamber. The judges of the former Court, after a short time, expressed themselves unwilling to decide so important a question ; and accordingly they adjourned the case to the Exchequer Chamber, where all the twelve judges of the land sat in full state to hear the arguments.

Oliver St. John, a lawyer of Lincoln's Inn, led off for Hampden. St. John had not been a lawyer in great practice or of great repute up to that time ; but in his first great case he showed himself to be a man of learning, industry, and ability. He went straight to the point. He did not, he said, challenge the position that the King was the leader of the nation in war. He did not dispute, as a general proposition, that the defence of the whole kingdom must be paid for by the whole kingdom. He did not dispute that the King was the sole judge of the kingdom's danger. What he did challenge was the proposition that the King could lay upon the country a charge, however necessary for the country's good,

without the consent of Parliament and by a mere act of power.

Put very shortly, St. John's position was this: That the subject has a right to his own property; that this property cannot be taken from him except by a legal method; that the law has given the Crown certain feudal rights over the subject's property; but when these rights were exhausted the King alone, or the King in Council, had no power to touch such property. The only authority by which the subject's property could be subjected to any new burdens was the King in Parliament—that is, the King, Lords, and Commons.

Quite true, said St. John, that the kingdom must be defended. For this purpose the law allowed the King to call on all his vassals to serve for forty days; to call on the Cinque Ports to furnish ships and munitions of war. But, if the kingdom needed any defence which these forces could not furnish, or which his ordinary revenue could not afford to pay for, then Parliament must be summoned and asked to grant supplies.

*No man can be taxed without his consent.* That, said St. John, was the reason why Parliament ought to be summoned to raise revenue when the ordinary revenue was insufficient.

As his strongest argument, the learned lawyer relied on the fact that one king after another, from Edward I. to Elizabeth, had summoned Parliament and asked for aids and subsidies in time of pressing danger. Why had they done so, when, according to the Crown in this case, they had every right to take it without asking? "It is rare in a subject, and more in a prince, to ask and take that of gift, which he may and ought to have of right."

"My lords, to apply all to the thing in question,

there is a cause for raising money for the defence of the realm, not defined in law, what will serve the turn? If his Majesty, as in the writ, may without Parliament lay 20s. on the defendant's goods, I humbly submit it to your lordships why, by the same reason of law, it might not be £20, and so *ad infinitum*; whereby it would come to pass, that if the subject hath anything at all, he is not beholden to the law for it, but it is left entirely to the mercy and goodness of the King." This was bold language for those times, when the theory of kingly majesty was such that judges who decided against the Crown were frequently dismissed from office off-hand; and advocates who argued cases with too little servility of phrase might easily find themselves in the Star Chamber.

The advocate also relied on various statutes; and here, it must be said, his argument appears to be not so sound. The principal Acts were *Magna Charta* (called by St. John, "the Statute of Running Mead, 17 Johannis regis"), the *Confirmatio Chartarum* of Henry III., and the Statute *de Tallagio non Concedendo* of Edward I. Now, *Magna Charta* merely says, "no *scutage* or *aid* shall be laid upon the kingdom except by the Common Council of the realm, except the three accustomed *aids*," viz., to ransom the King if captured, to provide dowry for his eldest daughter, and to knight his eldest son.

St. John argued that these words "scutage or aid" included all methods of taxation or imposition; that is, it was as good as saying, "No money shall be levied (except the three *aids* named) otherwise than by common consent." In my view, this is a false interpretation of the Great Charter. "Scutage" and "aid" were two well-defined forms of feudal taxation. "Scutage" was

"shield-money," paid by a tenant of the Crown instead of serving forty days in the field in person; an "aid" was money paid by a tenant of the Crown to help his lord on a particular occasion. Neither of these words could apply to any taxes imposed upon anyone other than a landowner who held his fief direct from the King. And this was enough to dispose of St. John's argument.

Next, as to the *Confirmatio Chartarum*. This merely confirms Magna Charta, and so carries the case no further.

As to the *De Tallagio non Concedendo*, this statute might have helped the argument a little, and did so help it; for it says, "No talliage or aid shall be imposed or levied by us (Edward I.) or our heirs in our kingdom without the common will and assent of the archbishops, bishops, and other prelates, earls, barons, knights, burgesses, and other freemen in our kingdom" (*i.e.* Parliament).

To begin with, *talliage* was a certain tax on towns in the demesne of the King—*i.e.* subsisting by virtue of royal charter. *Aid*, I have already explained. So it is doubtful how far the *De Tallagio* referred to general taxation. More curious, however, is the fact that this so-called statute was not a statute at all, as has now been clearly proven. True, Parliament had mentioned it as a statute in the Petition of Right (1628); and this was held to give it the force of a statute. How the mistake came to be made, I know not. In any case, it was clear that the *De Tallagio* was never intended to be a total renunciation of the Crown's right of taxation; for Edward I. himself, and all succeeding monarchs, had continued to levy numerous taxes without protest from Parliament or otherwise. People had only protested when some new tax was attempted to be imposed.



After St. John had argued for two days, Sir Edward Littleton, the Solicitor-General, spoke for the Crown. Littleton's argument was a very close and well-reasoned one. He recalled the judges to the point, namely, "whether, when the kingdom is in danger, the King can charge the subject for the salvation of the realm." On this the Solicitor argued well. He showed by ancient precedent that the King could take extreme measures for the defence of the realm: he could rase suburbs, break down sea-walls, burn crops, and so on. The levying a tax was much less than this.

It was not so much the argument, as the garnish, which went to make the Solicitor's speech dangerous. "I shall be sorry," he said, "to hear there shall be no salvation for the people but in parliaments." As to the King asking for money from his people, and not demanding it, that, said Littleton, was mere politeness. Precedent was answered by precedent; and there is no doubt that Mr. Solicitor was able to show many cases where the Crown had levied money without Parliament.

His most cogent argument, however, was one founded on reason and convenience. Suppose, he said, the King could not levy taxes for the common defence on a sudden emergency, but were obliged to wait for Parliament to meet. Parliament had to be summoned by writs allowing forty days for their assembly. During forty days the enemy might have landed and destroyed the country. Such power to act in an emergency for the common weal must, by the nature of things, exist; if it existed, somebody must be able to use it; and if somebody, who could it be but the head of the state, the King?

This seems to be a very powerful argument; as powerful on the one side as St. John's on the other, that

if this were so the King might levy as much as he would, and no man would have anything to call his own.

The latter argument was met by Littleton in this wise: You are not to impute to this King or to any other that he will be tyrannical. What interest has the King to beggar his subjects? Is it not rather his interest to lighten their burdens so that they may live happily and contentedly as good subjects? Besides, the writ takes care that all men shall be assessed equally (*i.e.* rateably).

After three days of Littleton, Mr. Holborne followed for Hampden. It will be observed that counsel on the two sides spoke alternately—first one for the defendant, then one for the Crown, then another for the defendant, then a second for the Crown. The modern practice is for the counsel on the same side to follow one another.

I can never understand why Oliver St. John should have acquired such great fame by his speech, while nothing is ever heard about Holborne's. For this counsel's address (it lasted four days), whether for historical research, keen argument, or knowledge of legal principle, seems to me to be easily better than St. John's. First he showed that the King can only do what the law permits. Law is by (*a*) Common Law, (*b*) Statute. Now there is no statute allowing the charge for ships. The Common Law, which is the custom of the realm, never knew such a writ, except for maritime counties. Therefore, in levying ship-money on inland counties, the King was either not acting within the law, or was making a new law. And nobody had ever suggested that the King could make laws without Parliament. As Holborne cogently inquired: "Why call a Parliament if the King can make laws and levy taxes of his own will?"

Space does not permit even of a summary of Holborne's speech. But room must be found for a characteristic interlude, which casts some light on the tyranny of those days. After arguing for a few hours that the writ of ship-money was bad in point of form, Holborne paused. He had now come, he said, to the "argument on the main," and feared to proceed. He waited their lordships' commands. "Go on," said Chief Justice Finch, "we do not use to judge cases by fractions." Holborne proceeded to make an elaborate apology. He could not be wiser than God had made him; and if by chance he said anything apparently derogatory to the King's power, he hoped to be excused.

*Finch:* "Keep you within the bounds of your duty, as befits one of your profession at the Bar at Westminster, and you shall have no interruption."

But it was not long ere counsel was interrupted. Arguing that unlimited power was, by this writ, claimed for the Crown, Holborne observed, sarcastically: "Were his Majesty immortal, as he deserves, and sure that his successors may be heirs to his virtues as well as to his crown, we might wish the royal power unlimited."

*Finch:* "This belongs not to the Bar to talk of future government. It is not so agreeable to duty to have you bandy what is the hopes of succeeding princes when the King hath children of his own that are like to succeed him in his crowns and virtues."

*Holborne:* "For that whereof I spake, I speak as looking forward many ages—five hundred years hence."

After Holborne, Sir John Banks, Attorney-General, for the Crown, who began his argument with a dissertation on the kingly office under the ancient Britons. In his case also, it was not so much the argument in the case as the extraneous observations that made standers-

by uneasy. He preached absolutism, pure and simple. "For the King of England, he hath an entire empire, he is an absolute monarch. Nothing can be given unto an absolute prince, but is inherent in his person. . . ." "The King holdeth his empire immediately of the God of Heaven."

For three days Sir John alternately hurled ancient records at the bench, and harangued on the Divine Rights of Kings.

Judgment was not delivered straightway. The judges took a long time to consider their decisions. Finch and one or two others had already made up their minds; but a few of the judges were doubtful, notwithstanding their written opinions of February, 1636.

Eventually, in the following term, the twelve grave and reverend signors delivered their opinions, each of which took about a day in the delivery. Many people, aware of the private joint opinion given by the same judges in 1636, were prepared for a unanimous judgment in favour of the Crown. But, to their lasting honour, some of the members of the bench refused to consider themselves bound by an *ex-parte* opinion, delivered before they had heard both sides; and in the end seven were for the King and five for Hampden.

The learned Justice Croke delivered the principal opinion for the defendant. He examined the precedents. He pointed to the year 1588, when the country was threatened by the Great Armada, "Yet, when there appeared so great a danger of invasion, there never went any such writ into the counties of England, to provide ships. . . So I conclude this point, that I conceive this course cannot be taken by any prerogative or royal power, nor on any allegation of danger or necessity.

You may take a bondman's goods without his consent, but not a freeman's." Again, Croke knocked the bottom out of those precedents which showed that at various times Kings had levied money arbitrarily, by observing that "many things have been done which are not allowed for law." Finally, he pointed out that no precedent had been produced exactly in point—*i.e.* which showed that ships or ship-money had been exacted from an inland county.

With Croke went Hutton, Denham, Davenport, and Jones. On the other side, Weston, Crawley, Berkeley, Vernon, Trevor, Brampton, and Finch.

If the majority had confined their discourse strictly to the matter before them, it may be that their judgments would not have excited much animosity. But almost all of them went out of their way to extol the King's prerogative. In effect, they said not merely that this particular writ of ship-money was lawful, but that the King could lay on any tax he chose; so that, as Clarendon puts it, "Every stander-by felt that the reasoning of the judges put his whole estate at the King's mercy."

Crawley delivered himself of the astounding dictum, that if the Statute *de Tallagio* and the Petition of Right did forbid such taxation, they were void. Why? Because "this imposition without Parliament appertains to the King originally, and to his successors *ipso facto*, if he be a sovereign in right of his sovereignty from the Crown. You cannot have a King without these rights; *no, not by Act of Parliament.*"

Berkeley, on the same subject, observed: "The law knows no such king-yoking policy. The law is an old and trusty servant of the King's; it is his instrument which he useth to govern his people by. I never read,

nor heard, that Lex was Rex ; but it is common, and most true, that Rex is Lex."

Vernon boldly averred that " a statute derogatory from the prerogative does not bind the King." Trevor, after stating that 500 years B.C. Britain had a " politic and regal government," and had had one ever since, added, " It is proper for kings to command, and subjects to obey." But the bright particular star was Finch's opinion. " The King holds this diadem of God only. All others hold their lands of him, and he of none but God. From hence only I will observe that none other can share with him in his absolute power." " Acts of Parliament to take away his royal power in defence of his kingdom are void ; they are void Acts of Parliament to bind the King not to command the subjects, their persons, and goods, and I say their money too."

So judgment went for the King.

But the country was roused. Every man of substance felt himself insecure. From that moment the tax, hitherto paid fairly cheerfully, began to be difficult of collection. As for John Hampden, he jumped at once from the position of an obscure country squire to the leadership of the Opposition. Moreover, the modest way he had conducted himself during the litigation had gained for him the respect even of his enemies ; and to this day, the Englishman who wishes to commend an obscure citizen who boldly stands for civic rights calls him " a Hampden."

The assertion by the judges that they were prepared to declare arbitrary power legal—a curious contradiction—brought down on them the wrath of the nation. The principal members of the Bench were impeached by the Long Parliament. Finch was compelled to flee to Hol-

land to save his head. And, almost unanimously, it was resolved by both Houses that the proceedings in Master John Hampden's case were illegal and void.

But the case of ship-money did not finish its course before it had brought about the irrevocable destruction of all kingly right to tax the subject, and the final subversion of the doctrine of the Divine Right of Kings.

### XIII.

## A MISCARRIAGE OF JUSTICE.

### *Trial of Captain Green and Others for Piracy and Murder.*

TO understand somewhat of the feeling excited by this case, the reader must carry his mind back to the period before the Act of Union between the Scottish and English Parliaments. The Scots had started a company on the lines of the English East India Company for the purpose of trading to India and Africa and South America. A large sum—£400,000—had been subscribed. A settlement was founded on the Isthmus of Darien. But the East India Company, the Dutch East India Company, and the Spaniards, who had enjoyed a monopoly of this trade, looked on the new rival with a jealous eye. In particular, the East India Company claimed that the South Africa Company was infringing its legal rights.

Accordingly, on some pretext or other, the East India Company caused to be seized in the Thames a vessel belonging to the African Company. The Scots vainly solicited its restitution; and the blood of the Caledonian boiled to think of the injurious treatment his native enterprise was receiving at English hands.

Before long, however, an opportunity for revenge presented itself. An English East India ship, named the *Worcester*, commanded by one Thomas Green, put into the Firth of Forth in the winter of 1704-5,



laden with East Indian produce. The members of the crew, when on shore, drank copiously and talked freely, as seamen have been wont to do on returning from a long voyage.

One of the Scottish ships that had sailed for the East was the *Speedy Return*, commanded by Captain Drummond of (I think) Leith. One day a member of the *Worcester's* crew, George Haines, was drinking in company with an Edinburgh tailor, named Wilkie, and a woman named Anna Seaton. Wilkie asked Haines if he had heard anything of Drummond's ship: "my brother, Andrew Wilkie, went out in her as surgeon," he added. Haines flew into a passion. "What the — have I to do with Captain Drummond's ship?" said he. Wilkie then left; but Anna Seaton pursued the inquiry. Haines then said that he had heard on the coast of Malabar that Drummond had turned pirate. Afterwards he said, "If Andrew Wilkie was with Drummond, you will never see him again." Another day Haines appeared to be sunk in deep melancholy, and said to Anna Seaton, "It is a wonder, since we did not sink at sea, God doth not make the ground to open and swallow us up for the wickedness that has been committed during the last voyage on board that old bitch Bess," pointing to the *Worcester*. "If people knew what Madder (the chief mate) has done, he would meet with the fate of his uncle," said Haines. "And what might that be?" the bystanders asked. "He was burnt in oil at Amsterdam for attempting to burn his ship," was Haines's reply.

Haines, be it said, was making hot love to Anna Seaton. One day she told him she had an old sweetheart aboard Drummond's ship, and would be glad to hear some tidings of him, dead or alive. Whereupon

Haines asserted quite solemnly, "If he sailed with Captain Drummond, you will never hear of him again."

Anna Seaton seems to have been impressed by the talk of the *Worcester's* steward. So, also, does Wilkie. And they set gossip afloat to such effect that ere long rumour credited Green and his crew with piracy, the sinking of Drummond's ship, and the slaughter of Drummond and every soul aboard.

The Procurator of the Admiralty Court of Scotland began to move. Anna Seaton and James Wilkie were questioned, and the ship *Worcester* was searched. The searchers, all men accustomed to handling cargoes, found the hold of the East Indiaman in great confusion. Piles of valuable goods were there, but not packed as cargo generally is packed. They were stowed well enough, but there were no marks or numbers to identify where they came from, or who were the consignors or consignees.

The authorities took possession of the ship, and arrested Green and his crew; and thereupon Madder, the chief mate, on being questioned about Drummond's ship, took out of his pocket a seal of the Scottish Africa Company—such a one as would be aboard Drummond's vessel for the captain's use.

As soon as these facts, blown by the breath of rumour into a flame a thousand times greater than any legitimate inference warranted, were known, the populace of Edinburgh and Leith clamoured for the lives of the Southrons who had spilt Scottish blood. So great was the public feeling that a fair trial became impossible at the hands of a Scottish jury. And in such a set of circumstances the Scottish Privy Council resolved on putting Green and his men on their trial before the High Court of Admiralty. The judge of

that court asked for assistance, and five judges and councillors were appointed to sit with him as assessors. It was decided to impanel a jury, and give the prisoners the benefit of being tried by that tribunal.

Accordingly, on the 14th of March, 1705, Green, Madder (first mate), Reynolds (second mate), the super-cargo, boatswain, gunner, gunner's mate, carpenter, steward, surgeon's mate, and five seamen (fifteen in all) were put on their trial for piracy, robbery and murder. The assize, or jury, of fifteen, was composed of five Forth skippers, two landed gentlemen, and eight Edinburgh merchants—about as unfair a jury as could be got together. For the seafaring population of the Forth were loud against the accused; the merchants of Edinburgh were up to the neck in the Africa Company; and thus the only two jurymen likely to be impartial were the two lairds—not much protection where the verdict is by a majority.

Originally, three others had been indicted, but the Procurator had let them go because he could gather no evidence against them. The surgeon, Charles May, and two black members of the crew, Antonio Ferdinando and Antonio Francisco, had turned Queen's Evidence, and were never indicted at all.

The indictment was a curious one. It alleged that the prisoners, having sailed from England on the *Worcester*, "upon pretence of merchandising towards the East Indies" (pretty good, this "pretence," when one remembers it was an East India Company's ship), they did "upon one or other of the days of February, March, April, or May, 1703, rencounter and meet with another vessel, upon the coast of Malabar near Calicut, the said vessel bearing a red flag, and having English or Scots aboard." That Green attacked this other ship,

boarded her, killed and threw overboard all the crew, confiscated all her cargo, and took the ship to the shore and sold her.

It will be observed that the indictment does not specify the date upon which the act of piracy was alleged to have been committed, any nearer than some time in one of four months ; nor does it purport to give the name of the ship alleged to have been piratically captured, nor any particulars of her except that she was English or Scotch. In fact, the indictment was as loose as could be, and very indefinite—a capital fault in a criminal accusation. Again, it will be observed that no accusation of general piracy was made, but only of one piratical act.

The evidence was curious. Antonio Ferdinando, a coloured man, being first examined as to whether he was a Christian man, said he was. He declared through an interpreter that he went aboard the *Worcester* at Callicoiloan, on the Malabar coast, and was engaged as cook's mate. When this was he did not know, but he believed it to be about two-and-a-half years ago (*i.e.* about September, 1702). He sailed in the sloop which attended on the *Worcester* from Callicoiloan to Keilon, thence to Cocheene, thence to Calicut, and from that to Tillicherry. Upon the Malabar coast, he proceeded, he saw a fight between the *Worcester* and her sloop on the one side ; and another ship, flying English colours, on the other. The crew of the latter ship spoke English. The colours were red, white and black, similar to those of Captain Green's ship. What happened was, that Green and his purser went aboard the strange ship and stayed for the space of a glass, and then returned to the *Worcester*. Immediately after, the sloop was manned with twenty men, four guns, and

two pattereroes; Green himself, Mr. Loveday, the supercargo (since dead), the carpenter, gunner, and about fourteen others, who were afterwards joined by Madder, went aboard the sloop, which made an attack on the stranger ship. The *Worcester* joined in the engagement. For three days the fight lasted, and on the third day the stranger was carried by a boarding party from the sloop, all her crew were slain with hatchets after the ship was taken, and their bodies thrown overboard; and the goods in the stranger's hold were carried to the *Worcester*.

Ferdinando was unable to say how many men the *Worcester* lost in killed and wounded. He himself was wounded—everyone could see the scar on his arm. Madder told him that if ever he told any person, black or white, of the fight he had seen, there would be trouble; for the mate would kill him and heave him overboard. "This coat which I am wearing," added the witness, "was taken from the captured ship."

What became of the ship? It was taken to Malabar, and sold to a king there. He did not know the king's name, but knew he had a servant named Coge Commodo. The precise locality of the fight was between Tillicherry and Calicut, off the Malabar coast.

In cross-examination, the black gentleman could not give any idea of the number of the stranger's guns, but thought there were about twenty, small and great. He was unable to say when the *Worcester* joined in the engagement, whether the first, second, or third day. He could not recollect who sailed the prize to the place where she was sold. The crew of the stranger numbered about ten men. (Not many to fight twenty guns!)

The next witness was Charles May, the ship's sur-



‘GO AND MIND YOUR PLAISTER-BOX!’ (p. 213).



geon, who swore he sailed with the *Worcester* from England, and came back with her. When the vessel went to the coast of Malabar, this witness was put ashore at Ibeck, and thence proceeded overland to Callicoiloan. Some time thereafter, in January or February, 1703, he heard the sound of guns at sea. He met Coge Commodo, who was the *Worcester's* merchant,\* along with the linguister (interpreter), and asked what the noise was. "The *Worcester* has gone out, and is fighting another ship at sea," was the answer. Next morning witness went down to the shore, and saw the *Worcester* at her berth, about four miles out. He was astonished to see the longboat being pulled to shore, and still more astonished to see another vessel riding at the stern of the *Worcester*. When the longboat landed, witness asked why it had come ashore, and was told it was to fetch water, because "*there had been busking all night*," and the water was all staved. A day or two after, he went aboard the ship, and saw the deck littered with chests and bales of goods. To Madder, who appeared to be superintending the stowage of these, witness said, "You are full of business." Whereupon Madder replied, "D——n you! Go and mind your plaister-box."

No doubt the good doctor was shocked to hear a first mate swear, and to see him in a bad temper. A first mate has, as a rule, the temper of a saint and the tongue of a Methodist.

The doctor seems not to have been on very good terms with the mate; for, a day or two after, when he went on board again, Antonio Ferdinando came to him to have a wounded arm dressed, and one or two other

\* *I.e.*, the man who bought native produce to make up a cargo; and sold English goods—a sort of factor.



men came to have wounds attended to. He (the doctor) asked one of his patients how he came by the wound. Madder was standing by. "Don't you ask any questions," he shouted; and, to the seamen, "And don't you answer any."

In cross-examination, he admitted that he had had a quarrel with Madder, who had sent him ashore against his will on one occasion. Further, that he never heard any of the men speak, on the voyage home, of having taken a ship. Some goods were taken in, in the ordinary way, at Calicut. Most important of all, he admitted that while the firing at sea was going on, Mr. Loveday was ashore. Now this, if believed, completely discredited Antonio Ferdinando's story; for he had sworn several times over, and with great circumstantiality, that Loveday was in the sloop, and took part in the piratical attack.

Antonio Francisco was the last witness of importance. He was a young black, servant to Green. On the coast of Malabar, he said, he heard some guns—about six—shot from the *Worcester*. He (the witness) was chained and nailed to the floor of the fore-castle at the time. He had been so chained for ten days before the shooting, and continued so chained for nearly two months thereafter. He heard nothing about a captured ship except from the other black, Ferdinando, who told him they had taken a ship, and that he (Ferdinando) had been wounded in the action.

Francisco's evidence was, in fact, practically all hearsay, from Ferdinando; and ought never to have been received.

Some other witnesses were called, who did not advance the case much. James Wilkie, Kenneth Mackenzie, Anna Seaton, and two others swore to the con-

versations with Haines (see p. 208). John Brown and Archibald Hodge, two Forth skippers, deposed that the goods on the *Worcester* were not numbered or marked, as was customary. They admitted, however, that they had never seen an East India Ship unload before.

In short, the evidence for the prosecution amounted to nothing at all, except for the testimony of Ferdinando; and that veracious gentleman of colour, the only man who pretended to have seen the fight, was contradicted in a most important particular by May, the surgeon. May's evidence amounted to just nothing at all. He did not prove that the firing he heard at sea was that of the *Worcester's* guns. He did not prove that when he went aboard, the *Worcester* was damaged by shot, as she must have been had she been fighting for three days. In fact, he proved nothing, except that Madder treated him roughly and discourteously.

It was insinuated, all through the trial, that the ship piratically attacked was Drummond's, and the murdered men were his Scottish crew. Not a syllable of this was proved, or attempted to be proved.

The prisoners, all except Reynolds, the second mate, were found guilty of piracy, robbery, and murder. In vain their counsel urged the discrepancies in the evidence; the manifest ill-will of May against Madder; the flimsiness of the proof; the respectability of the accused; the fact that the *Worcester* was a vessel duly chartered on a lawful voyage, and that the Scottish Africa Company's correspondent had entrusted Captain Green with a message and packet for his board—which would be very unlikely in the case of a pirate. None of these considerations could outweigh, in the minds of the majority of the jurymen, the single fact that the blood of some Scots was crying aloud for

vengeance; and that the English had seized a Scottish vessel in the Thames.

After the conviction, there was some talk of pardoning Green; but the Edinburgh mob stopped the Chancellor of Scotland in the street and threatened to tear him limb from limb if he allowed mercy to the pirate—the murderer of kindly Scots. So Green was hanged in chains.

And in the end it turned out to be, as popular justice so often is, a complete mistake. The breath was hardly out of Captain Green's body, when there turned up at Portsmouth two sailors, named Phippany and Freeland, who had been of the crew of the *Speedy Return* (Drummond's ship). They had sailed to Guinea, thence to the Cape, and thence to Madagascar, where they took in a cargo of negroes and carried them to Don Mascarentas. From that port they returned to Madagascar for another cargo; and while there, when Drummond, Wilkie (the surgeon), and others were on shore, five pirates came on board on pretence of trading, suddenly pulled out pistols, and overpowered the men on deck. Then they hoisted a signal, whereupon some forty other pirates pulled out from the shore, and, putting on sail, made off with the *Speedy Return*. After various adventures, the pirates burned the ship, and took to another that they had captured—a Mocha ship of Surat. Phippany and Freeland with difficulty escaped at the Island of Mauritius, and obtained a working passage to Portsmouth. As to the *Speedy Return* ever having been attacked by the *Worcester*, there was no word of truth in it. This story of the capture of the *Speedy Return* by pirates at Madagascar received complete confirmation some time afterwards from the production of a letter written in

November, 1703, by Captain George Wedley, a resident in Madagascar, to Mr. Penning, of the East India Company's service at Calicut. The letter had, as will be seen from the date, nothing to do with the charge against the *Worcester's* crew. It was merely a mixed business and friendly letter.

In it, the writer complains bitterly of the encouragement and countenance shown to pirates by the authorities at Madagascar. He gives instance after instance of open piracy; and amongst others says that John Bowen, a pirate captain, was invited by the governor to "make it (Madagascar) a place of refreshment . . . where, at a place called Maritan, the captain (Bowen) with a gang settled themselves, till two Scotch ships, falling in the port, were both surprised and taken by them . . . The pirates . . . lost one of the Scotch vessels, but at last the two met at Mayotta, where it was my misfortune to fall into their hands, and detained by them after they had slain my chief mate, and plundered what they pleased." To complete the identification of the vessel, Wedley wrote, "They took two sail of Surat ships at Mocha; one was taken by Thomas Howard in the *Prosperous*, the other by John Bowen in the *Speedy Return*, a Scotch ship." And, corroborating the story told by the two returned seamen nearly two years later, Captain Wedley continues, "In Rajapore were both pirate ships burnt; and both companies transported on to the Surat ship."

I must quote the British sailorman's description of the pirate crew: "About seventy Lascars, mounting fifty-six guns, and 164 fighting men; of which part are forty-three English, the better part of the company French; the rest negroes, Dutch, etc., nations that cries 'Yaw!'"

This account of the dangers of the seas before the British Navy had scoured the oceans and extirpated piracy is not only interesting in itself, but is a complete exoneration of the unfortunate master and crew of the *Worcester* from all guilt of piracy and murder—at any rate in connection with Drummond and the *Speedy Return*. At the very time when the *Worcester's* piratical attack was alleged to have been made upon the Scottish vessel, the *Speedy Return* itself, manned by a pirate crew, was roving the tropic seas, a menace to peaceful commerce, and a terror to all who used the nations' highway.

The mob of Edinburgh had its own way. "Vengeance! Vengeance!" was the cry. But that is no excuse for the jury who convicted on such flimsy evidence, or for the judges who allowed the jury to convict. Patriotism, clannishness, are excellent things in their way; but they are trespassers in a court of justice.

## XIV.

### THE DOUGLAS CAUSE.

#### *The Scottish Cause Célèbre.*

Johnson : " Sir, you will not say that the Douglas cause was a cause of easy decision, when it divided your court as much as it could do, to be determined at all."—*Boswell's " Life of Dr. Johnson."*

THERE are few Causes which assume proportions of national importance; and these are generally trials where some political right is at stake, or some public question involved. Naturally, a whole nation will await with anxiety the decision in a case of ship-money; or in an affair of the national honour and safety, such as the *affaire Dreyfus*. But seldom is the whole country upheaved by the trial of a purely civil issue.

Once in a way, however, it does occur that a private lawsuit engages the attention of the public to such an extent; and one litigant or the other enlists such an amount of public sympathy as to cause the decision to become a matter of national interest. This happened in the nineteenth century in the Tichborne case. In the eighteenth century the Great Douglas Cause convulsed the country. Doctors, lawyers, the Houses of Parliament, the man in the street, discussed with great seriousness and no little heat the question whether a certain youth was really the son of a certain lady. Pamphlets innumerable were written on the subject.\*

\* The ineffable Boswell himself wrote one (he could not persuade Johnson to read it) entitled, " The Essence of the Douglas Cause," " which," he naively writes, " I have reason to flatter myself, had considerable effect in favour of Mr. Douglas; of whose legitimate filiation I was then, and still am, firmly convinced." Johnson was well advised to leave the " Essence " alone. I cannot imagine it having any effect upon anybody, except, perhaps, to exasperate him.

And it was freely said that had the decision of the House of Lords been any other than it was, there would have been a rebellion in Scotland.

The quarrel was really one between the great ducal families of Douglas and Hamilton, and was an attempt on the part of the Hamiltons to gain possession of the vast Douglas estates, which were said to yield £14,000 a year, old rents.

To understand the claim fully, it is necessary to go back a little, and look at the state of the title to the Douglas inheritance. In the 1620's there was a Marquis William, Marquis of Douglas and Earl of Angus, who had two sons, Archibald and William. The elder, Archibald, died before his father, and was succeeded by his son, the Marquis James, who had two children, a son and a daughter. The son became Marquis, and afterwards Duke of Douglas; and it is of him, and his sister, Lady Jane Douglas, and the claim made to the Douglas estates after their death, that this story is written.

The younger son of the Marquis William, whose name was also William, became Earl of Selkirk, and was lucky enough to marry the heiress of the house of Hamilton. After his marriage he obtained a grant from the Crown of the dukedom of Hamilton, which was continued to his descendants in the male line of succession.

Thus the Duke of Douglas and the Duke of Hamilton were not very distant cousins, and in default of any male issue of the Duke of Douglas, the honours of that house would go to the Duke of Hamilton.

Now Marquis James had executed a settlement of the family estates so as to secure them, *first*, to his eldest son and his heirs of the body (*i.e.* in tail);

and *second*, to the younger son (afterwards Duke of Hamilton) and his heirs male of the body. Successive holders of the estates, however, had disentailed the property, and resettled it from time to time right down to the year 1761. So that the title to the property depended, it was said, on these newer settlements.

The Duke of Douglas was born in 1694, and his sister, the Lady Jane, in 1698. When he attained the age of manhood, the Duke was pressed to marry, for the purpose of carrying on the direct Douglas line; but he was a man of a curiously shy temperament, and he could not, apparently, bring himself up to the point of making a proposal. Lady Jane frequently put pressure on him in that direction. On the other hand, that lady herself seemed in no hurry to sacrifice herself on the altar of Hymen. Her brother, with whom she was long on terms of the greatest affection, wished her to make a suitable match; but, although she had none of her brother's shyness—indeed, she was a most vivacious lady—she resisted all inducements until she had reached an age when matrimony has, as a rule, receded into the background.

How it happened can never, now, be certainly known; but happen it did, that the brother and sister became estranged. On the one hand, it was suggested that his Grace had become disgusted with the levity of Lady Jane's conduct—it was said that she visited France disguised in men's clothes. On the other hand, it was averred that three of the Duke's servants and dependents, Archibald Stuart, White, and Major Cochran, had conspired together, either in the Hamilton interest, or their own, to make mischief between their patron and his only near blood relation. These three were accused of having poisoned the



Duke's mind by all kinds of false and malicious tales. They told him (so it was said) that his sister was trying to procure him to be shut up in a madhouse, so that she could enjoy the management of his estates; that she was responsible for certain insults passed on him by the Rebels in 1745; and so on.

However brought about, there can be no doubt that from about 1746 there was great coldness between Lady Jane and her brother.

On the 4th of August, 1746, this lady, in her 49th year, married John Stewart, commonly called "Colonel" Stewart, a gentleman of the family of Stewart of Grantully. He was a widower, with one son, and was about ten years older than the bride. Nothing can be more amusing than the conflicting accounts given by the Douglas and Hamilton supporters of Lady Jane's husband. "Poor," say the Douglasses, "but of the highest honour and most noble character." "A needy adventurer," say the Hamiltons; "a *roué*, a spendthrift, a dissolute person." In any case, the marriage was a most improvident one; for John Stewart had no profession, and practically no means. He was like the Irishman who, being asked what he lived on, replied, "On my debts." Lady Jane had a paltry £300 a year, of which £160 was her own, and the balance a voluntary allowance from her brother the Duke.

After the marriage, Lady Jane and her husband resolved to go abroad to live, for the sake of cheapness; and accordingly set out from Scotland in August, 1746. Up to this time the marriage had been kept secret; and therefore the parties left Scotland separately. Mr. Stewart joined his wife at Huntingdon, whither she had preceded him, along with her confidential maid, Hewitt, and two maidservants named Walker and Caw.

Stewart took with him a relation of Mrs. Hewitt's. A pass had to be obtained from the Foreign Office; and this pass was applied for and made out for Lady Jane Douglas, three womenservants, and two menservants. Stewart travelled as "James Kerr." The Hamilton faction afterwards suggested something sinister in this disguise; but I am unable to discover anything in the complaint, and prefer to believe the Douglas explanation, which was that a pass was more easily obtained for a lady than for a gentleman. The reader will remember that Great Britain was at war at this time; and that a Stuart rising had only just been suppressed.

Arriving at La Hague in the autumn of 1746, they lodged here in separate houses, until December, when they departed for Utrecht. Four months later they set out for Aix-la-Chapelle, where they all lodged in the house of Madame Lewis. Here the landlady was let into the secret of the marriage, as were also the two maids. Mrs. Hewitt already knew. The Douglas faction denied afterwards that anyone was told until about March, 1748. With the interval of a fortnight's holiday at Spa, the Stewarts continued to lodge at the same house until January, 1748.

The Douglas case was that in October, 1747, Lady Jane believed, and believed truly, that in course of time she would become a mother. It was said that Madame Lewis and Mrs. Hewitt discovered the fact by signs easily read by women; and that by January, a British officer, Lord Crawford, discovered the same thing, and even went so far as to make an unseemly jest upon what he saw.

Upon the other side, it was asserted that up to February, 1748, Lady Jane in terms even denied the

marriage to a friend, Lady Catherine Wemyss—a very unlikely thing to do if she were in the condition she alleged. The reply made by the Douglas party was to admit that the marriage was concealed (except from the landlady and servants) up to March, 1748, and this on the ground of expense—a single woman and a bachelor would not be expected to entertain; a married couple of such rank would be expected to do so.

In March, many friends in Aix were told of the marriage; for the lady's condition and appearance made it imperative that this should be done. The Hamilton faction contended that there never was any pregnancy; but that about March, Stewart and his wife had decided to practise an imposture on the Duke of Douglas. They thought that if they could produce a child and pass him off as Lady Jane's son, the Duke might increase his sister's allowance. Accordingly (said the Hamiltons) at this time Lady Jane began to hint to her acquaintances that she was in an interesting condition, and to assume some appearances of that condition.

On the 10th of April, 1748, Lady Jane wrote to her brother a letter, which was enclosed in another from Lord Crawford, confessing that she had been married more than a year and a half, begging his pardon for having allied herself to a poor man, and inviting him to rejoice, for that she was in a fair way to save their line from extinction. The Duke did not rejoice. Either of his own motion, or because his mind was inflamed by the arts of his three maleficent advisers (as the Douglasses alleged) he chose to be very angry; and to doubt how far it was possible for a woman at his sister's time of life to present the house with an heir.

In May, Mr. and Lady Jane Stewart took a step which certainly gave a handle to their enemies. They

left Aix, which was full of British subjects of their own rank, who had assembled for the Congress there, and set out by coach to Liège; thence they travelled over the Ardennes, *vid* Sedan to Rheims, where they arrived in June. Those who cast doubt upon Lady Jane's veracity said with some force, "Why should a lady in such a condition and of such an age undertake a three weeks' journey over rough roads within two months of the time she expected her trouble?" The answer given was that the approaching Congress of the Powers at Aix had so filled the little town with persons of high rank and their suites as to render the cost of living prohibitive for such people as the Stewarts; that they had at first intended to go to the waters of Bourbon; but had finally selected Rheims as a cheap spot, where the requisite assistance could be obtained without difficulty.

The Hamiltons pointed out, again, that neither in Aix nor during the progress to Rheims was any physician or accoucheur called in to advise the lady. This was admitted, and the answer was made that Lady Jane was quite strong.

At Rheims lodgings were engaged, and the Stewart household resided there from the 2nd of June to the same date in July. The next admitted fact is that on the 2nd of July Lady Jane, her husband, and Mrs. Hewitt set out for Paris, not in a private carriage, but in the common stage coach, which left Rheims at two o'clock in the morning. "Strange," said the unbelievers, "that a woman of rank, fifty years old, should undertake a two days' journey only a week before she expected an event so important." The believers replied that the reason for this move was that the expectant mother had learnt at Rheims that there was no

competent accoucheur in that town ; and she had therefore insisted on going to Paris for skilled assistance.

All parties were agreed, at any rate, that on the 4th of July the husband and wife and Mrs. Hewitt arrived in Paris, and put up at the Hôtel de Châlons, kept by one Godefroi. How long they stayed there and what they did afterwards were facts that came in controversy ; but it is certain that at about the 20th of July they were found at the house of Madame Michel in the Rue Serpente. What happened there was also disputed ; but it was not disputed that an infant child came to the house on the day of their arrival ; that master, mistress, maid and child, with a wet nurse, remained at Michel's until the 3rd of August ; that they went to Danmartin, a rural spot near Paris early in August ; and that on the 17th of August they all returned to Rheims, where Lady Jane gave out that on the 10th of July she had given birth to twin boys in Paris, and that the child exhibited at Rheims was the elder of the two. Friends were informed that the younger twin was so delicate that he could not undertake the journey, and that he had been left to nurse near Paris until he should grow stronger.

On the 20th of July, Mr. Stewart had written to two or three friends informing them of his happy fatherhood ; and on the 7th of August the Lady Jane sent a letter to her brother with the momentous news.

It was also not disputed that in October, 1748, Mr. Stewart left Paris again, and that in November, 1749, sixteen months after the alleged accouchment, he and his wife went from Rheims to Paris and returned with a boy, apparently about a year or so old, who was shown to various people as the younger of the twins.

To put it shortly, the point in the Great Douglas

Cause was whether the alleged motherhood of Lady Jane was a fact or an imposture.

About Christmas, 1749, the Stewarts and the two children, accompanied by the three maids, came back to England. Meanwhile they had been plunged into even greater poverty, for their miserable income of £300 a year had disappeared. A creditor had laid hands on the lady's own annuity of £160; and the Duke of Douglas, being persuaded that a fraud was being attempted, had stopped his payment of £140. King George III. came to the help of Lady Jane with a compassionate allowance of £300 a year; but nevertheless Mr. Stewart was arrested for debt in London and thrown into prison. Lady Jane journeyed into Scotland, to Castle Douglas, and tried to see her brother. But the Duke refused her admittance. It was freely stated by the lady's partisans that his hard-hearted refusal was not the result of his own unfettered judgment, but was brought about by the sinister influence of White, acting in the interests of the Hamilton family. This was in 1752. In the spring of 1753, Sholto, the younger of the children, died. He was said to have borne a striking likeness to Lady Jane, and to have been her special favourite. And it was said that her death in the following November was caused by her grief at his loss. On her death-bed she solemnly blessed the elder boy, who had been christened Archibald, and with her dying breath acknowledged him as her son. The orphaned child was taken by a Lady Schaw into her family, where he was called Archibald Douglas, and always treated as a lawful son of the Lady Jane. Lady Schaw died soon afterwards, and the Duke of Queensberry took the orphan boy in and brought him up.

Five years after his sister's death, the Duke, at the age of 61, married. His wife was a Miss Margaret Douglas, a strong-minded lady, who espoused with great warmth the cause of young Archibald. She investigated the causes of the estrangement between the Duke and his dead sister, and persuaded him that he had been entirely in the wrong, and that the quarrel had been brought about by the machinations of Stuart, White, and Cochran. The Duke had effected a re-settlement of the Douglas estates in favour of the Duke of Hamilton in 1754, upon the advice of the same three gentlemen. The young Duchess convinced her husband that they were in the pay of the Hamiltons.

Finally, in 1761, the warm-hearted lady persuaded her weak-minded husband that he himself had been imposed upon when he was made to believe that his sister had imposed upon him. The Duke of Douglas acknowledged young Archibald as his nephew, and in 1761 he cancelled the 1754 settlement, and made a new one. By the deed of July 11, 1761, the Duke of Douglas settled his estates, first on himself and the heirs of his body; failing children of his own, the property was to go to the *heirs of his father* (that is, to Lady Jane's children); failing any such heirs, to Lord Douglas Hamilton and the heirs male of his body. The Duchess herself took a handsome jointure and other gifts under this deed.

It is not to be supposed that his Grace of Douglas was brought to this frame of mind without trouble. The Hamilton people were not idle. In fact, they so far worked on the Duke of Douglas as to cause him to separate from his wife in March, 1759. But the differences were made up in less than six months, and the Duchess came back with increased influence; and, one

may be sure, with no increased love for the family of Hamilton. The deed of July 11, 1761, was her answer to them.

The Duke of Douglas did not long survive the act of justice (or mercy) to his sister. He died childless in 1761. And in September of that year the guardians of young Archibald claimed the estates under the deed of July 11. Formal proceedings resulted in the boy being "served" in the name, "Archibald Douglas of Douglas" (he seems to have dropped his father's name) as heir to the Douglas estates. The Hamiltons were cited to appear, but the proceedings were purely formal; and young Archibald entered into possession of the Douglas property (or, rather, his guardians did, in his name). He could not have the titles of honour, because they only descended in the male line, and he claimed through a female. So the Duke of Hamilton became Marquis of Douglas and Earl of Angus, as the direct male descendant of Marquis James. The dukedom of Douglas became extinct, because it had been granted to the late Duke and his male issue only.

It should be stated here that Mr. John Stewart had succeeded, in 1759, to the estates of his own family. On the death of his brother he became Sir John Stewart, Baronet, of Grantully; and his first act was to settle 50,000 marks—a large slice of his new fortune—on young Archibald. This was a very curious thing for him to do if the boy was not his son, for he had a son living by his first marriage, and it would be a strong step for him to take away such a sum from his own child and give it to a mere stranger in blood.

The Duke of Hamilton of 1761 was a minor, having for one of his guardians the Mr. Archibald Stuart



previously alluded to as one of the three confidential advisers of the Duke of Douglas who had worked throughout in the Hamilton interest. Almost a year after Archibald Douglas had been inducted into the Douglas estates, the guardians of the Duke of Hamilton resolved to make an attempt to dispute the succession. Mr. Archibald Stuart went over to Paris in August, 1762, and there, he said, was soon in possession of facts which convinced him that Archibald Douglas was not Archibald Douglas at all, but an impostor; that Lady Jane Douglas had never been pregnant; that she had never given birth to twins on the 10th of July, 1748, or at all; and that the alleged twins were two French children who had been stolen from their parents by John Stewart, the Lady Jane's husband.

Accordingly, on the 10th of December, 1762, an action was taken in the Court of Session to evict "Archibald Douglas" from the Douglas estates; and so commenced a seven years' war of the bitterest kind ever heard of in the history of litigation until the Tichborne case.

There were really three actions. I. The Duke of Hamilton claimed that all the resettlements of the estates since the Marquis James's days were ineffectual. That under Marquis James's settlement the issue of the second son (of James)—that is, the Hamiltons—were now entitled, *because the issue of the elder son was extinct*.

II. Lord Douglas Hamilton claimed under the late Duke's settlement of July 11, 1761, by which the property was to go to him if there were (a) no issue of the late Duke; and (b) no heirs of the late Duke's father.

III. Sir Hew Dalrymple claimed, with others, as

heirs general, descended through the female line, and entitled as heirs in default of nearer heirs.

Thus in all the actions one and the same question was raised. If Archibald Douglas was Lady Jane's son, (i.) the issue of the elder son of Marquis James was not extinct; (ii.) there were heirs of the late Duke's father (*i.e.* the father's daughter's son); and (iii.) the more remote heirs could not succeed as against a nephew of the deceased Duke.

Having begun these proceedings in the Court of Session, the Hamiltons took another step which did a great deal to prejudice them in the eyes of the British public. They commenced criminal proceedings in the Court of Tournelle, a branch of the Parliament of Paris, against Sir John Stewart and Mrs. Hewitt for the crime of supposition—that is, of putting forward a pretended child.

The Douglas people attacked their opponents fiercely for this. Why, said they, do you take criminal proceedings in Paris against two people who are in Scotland? Because, was the answer, we wish to get our evidence on record at an early date. Not so, said the Douglasses, you do it because you know that while this process is out against him, Sir John dare not go to Paris, which will considerably hinder us in our discovery of evidence. If he is innocent, said the Hamiltons, what has he to fear? And are you so simple as to think, answered the Douglasses, that an old man of seventy years of age will run the risk of being arrested by the French police, clapped into a dungeon, tortured to make him confess, mentally racked by repeated interrogations? Moreover, said the Douglasses, you prefer this Tournelle process because you can lodge in that Court any inconvenient documents, knowing as

you do that the Tournelle never lets documents go, and never allows the other side to inspect them. Again, you will obtain the powerful assistance of the French police, who will get up evidence for you, as the prosecutors, but will not help us, as the defenders.

Now let us see in what way the pursuers (plaintiffs) in the Court of Sessions proceedings attacked the genuineness of Archibald Douglas's parentage, and how the guardians of that interesting youth met the assault. Early in the suit—in fact, in December, 1762—Sir John Stewart was examined in the Court of Session, and in July, 1763, Mrs. Hewitt also was examined. In Sir John's case the examination was obtained on the allegation that he was about to quit the country. In the other case, Mrs. Hewitt was examined because she was old, and (it was said) likely to die. And in both instances the Hamiltons wished to have the evidence for use at the trial. The real reason for applying for these early examinations was that the pursuers wished to "pump" the two principal witnesses for the defender.

The Hamilton case was, of necessity, that the pregnancy and accouchement of Lady Jane were a sham and a pretence; and they accordingly questioned the witnesses closely as to dates, times, circumstances, places, and the names of persons present. Sir John's story (corroborated by Hewitt) was, at first, simple enough. He said:—"We arrived at Godefroi's Hotel in Paris on July 4th; there we stayed until the 7th, when I found suitable lodgings at Madame le Brun's, in a street (name forgotten) in the Faubourg St. Germain. There, on the morning of the 10th of July, my wife gave birth to twins in the presence of Madame le Brun and her daughter, Mrs. Hewitt, a widow woman lodging in the house, and Pierre la Marr, an accoucheur whom I

had engaged. Unfortunately, le Brun's house was infested with vermin, and, as soon as Lady Jane could be removed, we moved off to Michel's. By that time the younger twin had been put out to nurse with a woman recommended by la Marr. This child was so weakly when it was born that we never expected it to live, and la Marr sprinkled it. Lady Jane made a good recovery; we spent a few days at Danmartin; and returned to Rheims in August."

This story seemed simple and credible at first sight, but on cross-examination it began to wear a very different aspect. Let me epitomise, as well as I can, the cross-examination:—

Q.: "Where did la Marr live? By whom were you recommended to him?"

A.: "I met him first at Liège, in 1721. He was a Walloon, had been surgeon to a Walloon regiment; I knew him for a skilled accoucheur. I don't know where he lives; he never gave me his Paris address."

Q.: "Then how came you to employ him?"

A.: "Between July 4th and 10th I met him accidentally in Paris. It occurred to me I might utilise his services, which would be cheaper than a Parisian practitioner's. I asked him to undertake the case, and he promised to do so. He called and saw Lady Jane."

Q.: "But if you did not know his address, how did you summon him at the proper time? You must have known he might be required any minute?"

A.: "I took the risk of sudden labour—should have had to call in another man. But la Marr told me that at certain hours he could be found at the Luxembourg, the Tuileries, and a certain tavern. At these places I used to find him. In point of fact, he called at le Brun's on the morning of July 10; and, from what he saw,

remained there. Lady Jane was confined before noon."

Q.: "Do you know where la Marr is now?"

A.: "I have no idea. I believe he must be dead."

Q.: "Did you ever correspond with him?"

A.: "Yes—here are four letters, found in my wife's belongings after her death. They are letters from la Marr to me."

Q.: "But one of these letters is in a different handwriting from the other three?"

A. (after a long time): "Yes; these must be copies, sent by me to Lady Jane when I was in prison. They all speak of the children; and one of them contains an explicit statement that the writer delivered Lady Jane of twin boys."

Here a long scrutiny of the letters took place. In the end, they were submitted to a Frenchman, who declared that no Frenchman could have written them—there were blunders in idiom and other marks which made them clearly the work of a British writer. *E.g.* the word "persuadé" was spelt "perswadé"; and there was no "w" in the French language. The signature was "Pierre de la Marr"—a Frenchman never signs his Christian name; he signs "de la Marr" simply.

Ultimately, the letters were admitted by the Douglas lawyers to be obvious forgeries; and they then fell back on the theory that the incarcerated husband had forged them innocently—*i.e.* for his dying wife's satisfaction only—and then, in his old age (he was over seventy when he gave evidence) had forgotten the fact.

Q.: "Did you not, at Mrs. Napier's request, write down particulars of the accouchement, and did you not then give the house as Michel's, when now you say it was le Brun's?"

A.: "Yes, that is true. Michel's was the house we moved into later. But you will find I had merely made a mistake in the name—I identified the house as a house in the Faubourg St. Germain; Michel's is in the Rue Serpente."

Q.: "What street in the Faubourg?"

A.: "I can't tell you; but I could walk to it. It is a street on the left-hand side after leaving ——" (Here witness described the landmarks.)

Q.: "Any letters from le Brun?"

A.: "None."

Q.: "Did you write a letter (produced), dated July 10, 1748, containing the phrase, 'the happy hour we look for daily'? Is not that curious if your wife was confined on the morning of that day?"

A.: "It is a mistake in the date. I wrote that letter on the 6th."

This is enough to show that there was some excuse for those who disbelieved the filiation. A casual doctor, whose only addresses are a tavern and two public gardens, when the ostensible object of the journey to Paris at the eleventh hour was to procure a more skilled accoucheur, was a story that required some courage to tell, and some credulity to believe.

Nor was the matter made any better by Mrs. Hewitt's testimony. She, too, swore to the accouchement at le Brun's; *but she said that Sir John went to fetch la Marr* on the auspicious morning. Sir John had sworn that the accoucheur arrived by himself, and was in time by accident. Three contradictory statements were made by Hewitt on the question of the second child, Sholto, being put to nurse. In a contemporary letter she had stated that "Mr. Stewart and my lady have got a nurse for him out of Paris." In

through inquiries made by the police of Paris. That concerning Sholto came in a more curious fashion. At that time, when a crime had been committed in France, and no clue to the perpetrators of it could be obtained, the law called in the aid of the church. The bishop of the diocese issued a sort of proclamation, called a *monitoire*. In it, the brief facts of the crime were set out ; and all persons who knew anything on the subject were ordered, under pain of the Church's displeasure, to give full information to the *curé* of their respective parishes. Such a *monitoire* was issued in the Douglas cause at the instance of the Hamiltons. It set out that a Scottish gentleman, his wife and her lady's maid, had lived at Aix in 1748, travelled to Rheims in 1749, and come to Paris in July, where the lady had pretended to give birth to twins. That in reality these twins were children obtained by purchase or by fraud from their parents. That the elder of the two had been found to be the son of one Mignon, a glass-blower ; and that it was desired to find out how the other boy was obtained. And persons who had sold, parted with, or lost a son, in 1749 or 1750, were ordered to go at once to the *curé* and inform him of the same.

The *monitoire* had not long been issued before there appeared the wife of one Sanry, a rope-dancer, who told the story that in November, 1749, or 1750, she received a visit from a foreign gentleman and two ladies who had been recommended to see her because she had a boy whom they proposed to adopt. Her tale was that they said they wished to do an act of benevolence ; and would do the boy good. She accordingly let them take her little son, born the year before, a boy of fair complexion. A number of neighbours corroborated this tale ; but when they were asked to describe the

foreigners, their dress, appearance, and conversation, every woman gave a different account ; and not one of the descriptions answered particularly to Lady Jane or Sir John Stewart or Mrs. Hewitt. Moreover, it was averred that the tumbler's son had a rupture ; and when he left his parents could talk a little. But a certain Mr. Murray, who had seen Sholto, swore that he had no rupture ; and another witness testified that he had seen the boy in Lady Jane's house in December, at which time the lad could not speak at all.

The story of Mignon's child was more romantic. In 1748, said Madame Mignon, a baker woman told her that a foreign gentleman was trying to find two male infants. He wanted them to show to his wife, who had borne him twin boys. The twins had died ; and it was desired to make the lady believe they were still alive, because she was exceedingly ill. When the lady recovered, the children would be returned. Madame Mignon had not two children, but she had a baby boy, and him she offered to assist in carrying out the benevolent deception. The foreign gentleman accepted her offer, and took the child away in a carriage. Monsieur Mignon accompanied the gentleman, in order to see where the child was taken to. The carriage was stopped in a street with which the glass-blower was unfamiliar ; the gentleman descended with the baby in his arms ; there was a passage. " Here," said the gentleman, " is where I live," and disappeared up the passage. Mignon returned and informed his wife ; but when the anxious mother went the next day to make inquiries, she found that the passage had an outlet at the other end in another street. From that time she had never seen her bonny child. This tale was amply corroborated, and, as far as one can judge, was true. But as applied to



Archibald Douglas it broke down in one important respect. Mignon's child's eyes were blue, and its hair was fair. The gossips at Rheims had noticed when Lady Jane returned there in September, that her baby had black eyes and brown hair. The Hamiltons' explanation of this discrepancy was the obvious and well-known fact that most children's eyes and hair change colour. The retort was equally obvious. "You never heard of a child's eyes changing from blue to black and its hair from sandy to brown in the first three months of its life."

Upon this point of physical characteristics of the children, the Douglasses had a good deal the best of the argument. When Sir John Stewart stood up in Court in 1762 and owned Archibald as his son, the bystanders declared with practical unanimity that the lad was exceedingly like Sir John. He was even more like John Stewart the younger, Sir John's son by his first marriage, who was also present in Court.

The fair-haired Sholto was dead, as the reader knows; but a cloud of witnesses swore that he had been the very image of his mother, Lady Jane.

The Douglasses attacked the Hamiltons with great ferocity for issuing the *monitoire*. It was, they said, in its very form, an invitation to bear false witness. If there had been a genuine desire to discover the truth, it would have been enough to issue a *monitoire* simply inviting people who had lost children in 1748 and 1749 to come forward and give information, without putting into their mouths the story they were expected to tell.

In vain the pursuers pleaded the purity of their motives. "Is revenge nothing?" was the rejoinder. And the defenders proceeded to allege that Archibald Stuart, the prime mover on the Hamilton side, had quarrelled violently with Lady Jane Douglas, and with

the widow of the late Duke, who had espoused the cause of young Archibald.

It is amusing to read the cases presented by the rival lawyers. In the one, Sir John Stewart appears as a gentleman, extravagant, it is true, but the soul of honour and probity; Lady Jane as an angel of goodness; and the Duchess of Douglas as a sort of fairy godmother, whose mission it was to defeat the wicked machinations of Stuart, White, and Cochran. In the other, Sir John Stewart was represented as a dissipated rascal; Lady Jane as no better than she should be; and the Duchess as an intriguing woman who hated the Hamiltons, and stuck at nothing to injure them.

When the case was tried before the Court of Session in 1757, the testimony of not one single witness was received without the other side calling him or her, in plain terms, a liar. Sir John Stewart was dead by this time. On his death-bed he solemnly acknowledged Archibald as his son; and reiterated the truth of his story. Several witnesses, including the landlady at Rheims, a doctor, and the maid Walker, swore positively that Lady Jane was capable of child-bearing even after the alleged accouchement in Paris. The Rheims lady, being asked her reason, produced a characteristic French *mot*: "Parceque un arbre qui porte des fleurs peut porter des fruits." It was sworn by credible witnesses that in December, 1748, after the twins, Lady Jane had been ill for a time, and had said she was suffering from a miscarriage. The only reply made by the Hamiltons—indeed the only reply they could make—was that this was part of the plot.

Next to the cross-examination of Sir John, the most effective point made against the filiation was that on her own story this anxious mother never saw and never

attempted to see her second child, whom she knew to be weakly, for sixteen months after its birth. There was also some evidence that the lady did not appear to be ill at Rheims in June and July, 1748; nor when she returned from Paris in September did she bear the appearance of a woman who had recently been confined.

Well might Doctor Johnson say that the Douglas Cause was not easy of decision. The Scottish judges found it anything but easy. When they did deliver judgment they decided in favour of the Hamiltons, and against young Archibald's claim. But their lordships were equally divided; and a decision was only arrived at by the casting vote of the president.

In an instant all Scotland was in an uproar. The Douglas side had all the popular sympathy. The majority judges were mobbed in the streets of Edinburgh; and with difficulty escaped from the fury of the populace. But the case was not allowed to rest there. Young Archibald had friends as powerful as numerous; and an appeal was at once lodged with the House of Lords. It was almost two years before the appeal was heard; and in the meantime pamphlets, verses, letters, argumentative and otherwise, poured from the press in hundreds. When the case came on for hearing in the Lords, Fletcher Norton and Wedderburn appeared on the Douglas side; and Wedderburn made a speech described by Horace Walpole as the finest he ever heard on any occasion in any place. Wedderburn, be it said, was the first Scotsman to be successful at the English Bar. It is recorded of him that when he came to London his accent was so pronounced that he could hardly be understood; but he applied himself to the study of elocution with such success that in the end nobody could have suspected his nationality. Certainly he

achieved great fame as an orator, both at the Bar and in Parliament; and he ended a brilliant career on the Woolsack.

On the other side Yorke was the leading counsel, supported by a dozen of the greatest lawyers in England and Scotland.

The arguments were long—not on the law; for there was no law in question; but on the evidence; and the august tribunal swayed, now this way, now that. In those days, be it remembered, the House of Lords, as Supreme Court of Appeal, did not consist, as it does now, of lawyers only. All the peers could, if they desired, hear the arguments and take part in the judgment. Now the Douglas side was supposed to be the Whig side; and the Hamilton the Tory. And in those days the House of Lords was, on the whole, a Whig body. Far be it from me to insinuate that the noble lords desired anything but to do justice; but certain it is that the Douglas party soon began to have the upper hand.

Finally, on the 27th of February, 1769, the Lords delivered their judgment, and, with five dissentients declared Archibald Douglas to be the son of Lady Jane and Sir John Stewart. The Lord Chancellor and the Lord Chief Justice (Mansfield) were strong for the filiation. Mansfield pointed out that the foundation of the pursuer's case was that they had not found Madame le Brun's house. How absurd! quoth Mansfield. Do we not know that in a great city people are continually changing their abodes: that houses are continually being pulled down, and sometimes are never rebuilt. He declared that the evidence was overwhelming that Archibald Douglas resembled Sir John very strongly, as was the proof that Sholto resembled Lady Jane. "If Sir John Stewart, the most artless of mankind, was actor in

the *enlèvement* of Mignon and Sanry's children, he did in a few days what the acutest genius could not accomplish for years. He found two children: the one, the finished model of himself; and the other, the exact picture of Lady Jane." Again, alluding to her blessing Archibald on her death-bed, he asked the striking question, "Would she have died with a lie in her mouth, and perjury in her right hand?"

Lord Campden commented severely upon the *monitoire*, as being misleading. He declared that at the time nobody doubted the filiation of the children except Archibald Stuart, White, and Cochran; and denounced Stuart's trip to Paris in 1762 as a journey undertaken, not to procure evidence, but to suborn perjury. His lordship dismissed as vague and shadowy the stories of Madame Mignon and Madame Sanry. And wherever there was a conflict of testimony the Chancellor decided against the Hamiltons.

There was joy in Edinburgh when the decision became known. Great crowds paraded the streets for two nights, shouting "Douglas for ever!" Every house was illuminated—at any rate, the mob broke all windows that were not lighted up. The houses of the judges of the Court of Session who had given the adverse judgment were raided and seriously damaged. And eventually the military had to be called out.

So ended the Great Douglas Cause. The victorious litigant was afterwards created Baron Douglas of Douglas; he married, lived happily ever after; and his estates are now held by the descendants of one of his daughters.

## XV.

### TWICE TRIED FOR MURDER.

#### *The Trials of My Lord Mohun.*

CHARLES, fifth Baron Mohun, was as good a specimen of a "rakehell young scapegrace" as the post-Restoration period could show. Of noble parentage on both sides of the house, he never knew the restraining influence of a father's hand, for that parent was mortally wounded in a duel when Charles was an infant in arms. And his mother, a Roman Catholic lady, had been ordered by the Privy Council to see that her son was brought up in the Protestant religion! In fact, the young peer grew up without any sort of restraint, moral, religious, or physical. And as he was blessed with high spirits, a fine physique, and a fair share of wit, if not with a double dose of original sin, he became, when quite a boy, the terror of the town. Allying himself with another *roué*, the Earl of Warwick, the lad drank deep, played high, made love to actresses, and, at the mature age of seventeen, fought a duel. Two days after—to be accurate, on the 9th of December, 1692—occurred the incident which brought the young scapegrace to a trial for murder before his peers.

The Court of the Lord High Steward has not, in our day, been seen in its full pomp and glory. But in those days it was of more frequent assembly. And on the 31st of January, 1693, when it sat to try the boy

peer, it assembled in full state. For all the great world was in Westminster Hall that day. King William himself had left affairs of state to take care of themselves, and sat in a gallery specially reserved for him. Eminent Members of Parliament and great lawyers jostled for places with actors and men of fashion. Nor was there lack of beauty. "Women love a scamp," and none the less if he be very young, very handsome, very dissipated, and very wicked. Besides, was not this quarrel a quarrel about a woman—about Mrs. Bracegirdle, the pretty actress, not less celebrated for her virtue and her goodness than for her beauty and her talents? So that hundreds of pairs of the brightest eyes in Britain flashed upon the scene as the peers and great officers of state, the judges, all in their most gorgeous robes, marched, two and two, into the Hall. Last of all, preceded by Garter King-at-Arms and the Black Rod carrying between them the white staff of office, paced the most noble the Marquis of Carmarthen, Lord High Steward.

"Oyez! Oyez! Oyez!" cried the Serjeant-at-Arms, as he made proclamation for silence, while the King's Commission, constituting the Court, was read in Latin—doubtless to the great edification of their lordships. Then again the Serjeant cried, "Oyez!" and the Clerk of the Crown called upon the Governor of the Tower of London to "bring the body of Charles Lord Mohun, your prisoner, forthwith into the Court, upon pain and peril will fall thereon."

Thereupon the Governor of the Tower came forward, having at his side Lord Mohun; and a buzz of sympathy went through the Hall as the young man advanced with firm step and gallant bearing, not one whit daunted for that there marched before him the

gentleman jailor, bearing a headsman's axe. The edge of the axe was turned away from the prisoner. Would it—dread symbol—soon be turned with edge towards my young lord? Three solemn bows—one to my Lord High Steward, one to the peers on the right, another to those on the left—to which my lords responded by bowing with equal solemnity.

My Lord High Steward read to the prisoner a sort of allocution exhorting him not to be nervous, expressing pity for his situation, and assuring him that the tribunal would be merciful as well as just. The Clerk read the charge, and the prisoner was asked to plead. "Not guilty," said he. "How will your lordship be tried?"

"By God and my peers."

"Then," said the Clerk, "God send your lordship a good deliverance."

These stately formalities performed, the Attorney-General (Sir John Somers) opened the case. The prisoner was charged with the murder of William Mountford, not by actually striking the blow, but by being a party to an attack made by a Captain Richard Hill upon the murdered man. It was alleged that Mohun held the poor fellow in conversation while Hill ran him through with a rapier. The cause of quarrel and the circumstances of the crime appear from the evidence.

A man named Hudson swore that he was supping in a tavern with Hill and Lord Mohun when Hill said, "I should not doubt the success of my amour with Mistress Bracegirdle, if I were not obstructed by Mountford." It ought to be said that Mountford was an actor. The next witness corroborated this story, but added that he had heard Hill talk on more than one

\* If the prisoner was found guilty the edge of the axe was turned towards him.



occasion of being revenged on Mountford. Mrs. Knight, an actress, next deposed that Hill had asked her to intercede with his inamorata for him, and to give her a letter. The witness continued:—"‘No, Mr. Hill,’ said I, ‘I beg your pardon. You say she hateth you, and if she hateth you, she will not love anybody that speaketh for you; and I am not fond of creating myself enemies in the house, knowing I have some already.’ ‘What enemies?’ saith Mr. Hill; ‘Mountford, do you mean?’ And then, repeating a great oath, ‘I shall find a way with him speedily.’” It was here observed by the High Steward that this evidence proved nothing against Lord Mohun.

The same objection could not be urged against the story told by another dame of the theatre, Mrs. Sandys. Mrs. Sandys related how, the evening of the murder, she dined with Hill and Lord Mohun, when "there arose a discourse about Mistress Bracegirdle." Lord Mohun said, "It will cost Mr. Hill fifty guineas, this design." Hill observed, "If the villain offers to resist, I will stab him;" and Lord Mohun, "I will stand by my friend." Captain Hill then told the witness that he had a coach and six horses in Wych Street, to seize Mrs. Bracegirdle, and carry her away into the country. Lord Mohun's short cross-examination of the witness was to ask her if she were married or single. To which, after a long hesitation, she answered that she was single. The next witness called was John Rogers, who proved that Hill and Mohun met at the playhouse at six in the evening. He remembered it well, because when he had asked them for extra money for changing from the pit to the stage,\* they had told him they

\* The young bloods of the period frequently sat in the wings on the stage.

would slit his nose if he said any more about it! After a man had been called from whom the coach and six had been hired, the Attorney-General called "Mistress Bracegirdle."

The Court buzzed with excitement as the fair Ann stepped forth; and, in silvery tones, with all the perfection of enunciation for which she was renowned, told her tale. "My lord," she said, "I was at supper at Mr. Page's, and at ten o'clock at night Mr. Page went home with me. And coming down Drury Lane, there stood a coach by my Lord Craven's door, and the boot of the coach was down, and a great many men stood by it. And just as I came to the place where the coach stood, two soldiers came and pulled me from Mr. Page, and four or five more came up to them; and they knocked my mother down almost, for my mother and my brother were with me. My mother recovered, and came and hung about my neck, so that they could not get me into the coach, and Mr. Page went to call company to rescue me. Then Mr. Hill came with his sword drawn, and struck at Mr. Page and my mother; and when they could not get me into the coach because company came in, he said he would see me home, and he led me by one hand and my mother by the other."

After seeing the lady home—he was not allowed to cross the threshold—the enamoured captain fell into a furious rage. He declared to her, "I will be revenged;" and he and Lord Mohun, who had been present all the time, paced up and down the street, flourishing drawn swords, and swearing revenge. The watch appeared, with staff and lantern. "Gentlemen, why do you walk with your swords drawn?" Replied my Lord Mohun, "I am a peer of England. Touch me if you dare!" Such an answer made in the twentieth

century to Policeman X409 would cause that officer to blow a shrill whistle, draw a truncheon, and desire the noble lord to "come quietly." But the seventeenth century watch—a couple or three doddering old men—were intimidated.

The next witness of importance was a lady named Browne, Mrs. Bracegirdle's housekeeper, who told how her mistress came home on the eventful night, and of how she (Mrs. Browne) went to the door and saw the young lord and the amorous soldier walking up and down the street. "Saith Mr. Hill, 'I shall light upon this Mountford.' 'Why,' saith I, 'what hurt hath Mr. Mountford done you?' Saith he, 'I have been abused, and I will have my revenge'. So I went and told Mrs. Mountford." For, be it noted, Mountford was a married man. A few minutes after that Mountford came strolling down the street—in an expansive mood, for he had been out to supper after the play. Mrs. Browne rushed up to speak to him, but he waved her off, and would have none of her. But when he met the young peer he pulled off his hat, made a low bow, and said, "Your humble servant, my lord." My lord bowed with equal politeness, "Your servant, Mr. Mountford. I have a great respect for you, Mr. Mountford, and would have no difference between us, but there is a thing fallen out between Mr. Hill and Mistress Bracegirdle." Hill was standing by with drawn sword. The actor replied, with some dignity, "As for Mistress Bracegirdle, she is no concern of mine, and I hope your lordship will not vindicate such an ill man as Mr. Hill in such a matter as this."

Now Captain Hill was a man of choleric temperament. To-night he was especially ill-tempered from the failure of the attempted abduction. And he was probably quite half drunk. No sooner did he hear him-



·DRAW!' CRIED HILL, AND . . . RAISED HIS RAPIER AND RAN  
MOUNTFORD THROUGH" (p. 251).



self described as "an ill man" than he gave the actor a tremendous box on the ear. "D——e!" cried Mountford, "what is that for?" "Draw," cried Hill; and with the word he raised his rapier and ran Mountford through. "Thou hast killed me," exclaimed the wounded man.

There were many people in the street, and these promptly raised the cry of "Murder! murder!" The watch appeared on the scene. Hill took to his heels, dived up Surrey Street, and was not seen again. His youthful "friend" was left to bear the brunt; for my Lord Mohun either scorned to run, or was too much overcome by fright to have the use of his limbs. The beadle and the constable and others came running up; and his lordship surrendered his sword and was taken to the round-house or lock-up. The man who actually arrested him said, in answer to Lord Mohun's question, "I took hold of your sleeve, and you shook, and quaked, and trembled as if you would tear it to pieces."

One important piece of evidence given by the beadle was, that on the first occasion when the watch encountered the two roysterers, Lord Mohun actually sheathed his sword, notwithstanding his haughty language. Other witnesses said they thought he had it sheathed all the time of the fracas. None would swear he had it drawn at any time after Mountford appeared.

Mountford was assisted home, and two surgeons were called, both of whom informed him he was a dead man. He then told them that Lord Mohun had offered him no violence, but that while he was talking to his lordship Mr. Hill came up and struck him with his left hand, and "with his right hand run me through before I could draw my sword." In six hours he died.

The sole question left for the Court to try was whether there was a concerted plan to kill Mountford—

the plan being that Mohun should hold the victim in talk while Hill came up and attacked him. On this the facts against the prisoner were (1) his declaration that he would stand by his friend; (2) his remaining pacing up and down Howard Street outside Mrs. Bracegirdle's house; and (3) the fact that it was while he was speaking to Mountford that the latter was suddenly assaulted by Hill. The young peer made a clear, though not an elaborate defence. First, he called witnesses to prove that he only meant to stand by his friend in the abduction business. Second, he averred that he and Hill walked up and down before the actress's house in the hope that they would be allowed in, to ask pardon for the attempted abduction. As to the rest, Lord Mohun stated, and was corroborated, that he had no quarrel with Mountford, and that there was no evidence to show that he knew Hill was going to make a sudden attack.

The peers then propounded to the judges the following question: "In a case when a man shall murder another, whether all those who are in his company at the time of the murder are so necessarily involved in the same crime, that they may not be separated from the crime of the said person, so as in some cases to be found guilty only of manslaughter."

Now, the quaint rule of that time was that a person charged with felony (except treason) was not allowed counsel to conduct his case—to make speeches, cross-examine and examine witnesses, and so on. But he might have counsel to argue points of law for him. In this case two learned lawyers argued the points of law for Lord Mohun, and the judges decided it in favour of the prisoner. Other points of law were propounded, but the Earl of Nottingham went perilously near the mark when he asked "whether a person, knowing of the

design of another to lie in wait for and assault a third person, and accompany him in that design, if it shall happen that the third person be killed in the presence of him who so knew and accompanied the other, be guilty in law of the same crime as the party who actually killed him, though he actually had no hand in his death." To which the judges answered, that the actual slayer and the other man were both guilty of murder. For a whole day legal arguments proceeded on a variety of points raised by peers. Then they adjourned to the House of Lords and debated the question; and the next day, at four o'clock in the afternoon, came back to the Court, where each peer gave his verdict, beginning with the youngest baron. The Lord Leinster was the first. Standing up in his place, uncovered, and laying his right hand on his breast, he pronounced, "Not guilty, upon my honour." There were sixty-nine votes for not guilty, and fourteen for guilty. The Whig peers were all for "not guilty," many of the eminent Tories for "guilty." From which it may be guessed that Lord Mohun was a Whig—a great ornament to any party!

The prisoner was discharged. Proclamation was made that the Court was to be dissolved. All persons were "charged to depart hence in the peace of God." The Lord High Steward took the white staff in both his hands and solemnly broke it in two; and one of the most famous trials in English history was over.

It might have been supposed that the young nobleman had received sufficient warning of the error of his ways, and had sufficient time to meditate upon the evils of a dissolute life, to make it improbable that he should ever again engage in an affair of blood. But it was not so. So far from amending his life, Lord Mohun gave



himself up to pleasure with a relish even greater than before. He and his sworn ally, the Earl of Warwick and Holland, were long notorious for their evil courses. Heavy drinking, open vice, low company—nothing restrained the young patricians; so that even in an age not remarkable for sedateness they were notorious above all men. It was even rumoured that they occasionally took to the road, and replenished their purses at the expense of those who travelled on the king's highway. Lord Mohun, too, had gained a reputation for being quarrelsome, and the story of his duels would be much too long to tell here. He fought a member of Parliament, on one occasion, for remonstrating with him for beating a coachman in Pall Mall.

And in 1699 the Court of the Lord High Steward once more assembled in all its pomp and circumstance; once more the Governor of the Tower was called upon to bring forth the body of his prisoner; and once more Charles, Baron Mohun, of Okehampton, stood at the bar to answer before his peers a charge of wilful murder. The precise charge was that with the Earl of Warwick, a Captain French, and two others he had assaulted one Richard Coote, and that (in the curiously precise language of the indictment) "the aforesaid Edward, Earl of Warwick and Holland, with a certain sword made of iron and steel of the value of five shillings,\* which he, the said Earl of Warwick, in his right hand then and there held drawn, the aforesaid Richard Coote near the collarbone of him the said Richard Coote then and there feloniously, voluntarily, and of his malice afore-

\* The law was and is that the implement or means of murder shall be precisely set out in the indictment. The lawyers of those days always declared the value of the murderous implements.

thought, did strike, stab, and thrust in, giving to the said Richard Coote then and there with the sword drawn aforesaid, in and upon the left part of the breast of him the said Richard Coote, near the collarbone of him the said Richard Coote, one mortal wound, of the breadth of half-an-inch and of the depth of five inches, of which mortal wound he the aforesaid Richard Coote then and there instantly died ; and that you the said Lord Mohun together with the said Richard French, Roger James, and George Dockwra, then and there feloniously, wilfully, and of your malice aforethought were present aiding, abetting, assisting, comforting, and maintaining the said Earl of Warwick and Holland, the said Richard Coote, in manner and form aforesaid feloniously and of his malice aforethought to kill and murder ; and therefore [as in murder every accomplice is a murderer] the said Earl of Warwick and Holland and you the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Coote in manner and form aforesaid, feloniously, wilfully, and of your malice aforethought did kill and murder, against the peace of our sovereign lord the King that now is, his crown and dignity."

Put into plain English, the charge was that Lord Warwick and Coote had fought a duel, and that Mohun and the others had been seconds ; that the Earl had killed Coote, and that all, therefore, were guilty of murder.

Now Lord Warwick had been tried for the murder by the Court of the Lord High Steward the day before, and had been convicted of manslaughter only ; and I take my account of the events from the evidence given at the two trials.

It appeared that on the 29th of October, 1698, the

two graceless peers were drinking at the "Greyhound" in the Strand, along with French, Dockwra, James, and Coote, when, at about one o'clock in the morning, a quarrel arose. What it was about, nobody ever was able to say. The drawer of the tavern said "Mr. Coote laughed"—an offensive, drunken laugh, probably—and, on this being objected to by Dockwra, James, and French, said he "would laugh when he pleased, and how he pleased." To behaviour of this sort there was only one answer in those days. Swords flashed out; and in a twinkling Dockwra, James, and French were thrusting and parrying with the two noblemen and Coote. In the tavern the fracas was not carried very far, but Coote appears to have challenged French to meet him in Leicester Fields that night.

The drawer was sent for chairs, and procured three. Into these Warwick, Mohun, and Coote stepped, and ordered the bearers to proceed to Leicester Fields. A few minutes afterwards the other three obtained chairs also, and set off for the rendezvous. It appeared that Mohun had been the most sober, or, at any rate, the least drunk of the party; and he tried to persuade Coote to postpone the duel until some more suitable hour. On the way to Leicester Fields he went so far as to stop the chairs and expostulate with his friend against engaging in deadly combat in the dark.

Coote might have listened to reason; but at that moment the other three chairs came along, hurrying to the ground. "Damme," cried Coote, "get on, chairman, or I will prick thee with my sword;" and in an access of drunken fury he cursed and swore and vowed he would fight that night. What took place at Leicester Fields never really came out. The chairmen were able to prove that all the party, except Mohun, went into the

Fields, and that presently they (the chairmen) were summoned again, and found Coote lying on the ground, mortally wounded. French was, probably, the actual slayer.

As to Lord Mohun, he was not seen to go into the Fields. He said that he walked away a little, not caring to take part in a duel in the dark. And, as there was no evidence to contradict him, he was acquitted. Captain French offered to give evidence to prove what had actually taken place; but as he, like Lord Warwick, had been convicted of manslaughter he was not allowed to give evidence.

At that time a convicted felon was not allowed to bear testimony in a cause of this kind, unless he had either been pardoned or suffered his punishment. When French was convicted of manslaughter, he "pleaded his clergy." That is, he claimed Benefit of Clergy, a privilege allowed to those who could read.\* Having read a verse from the Bible, he escaped being sentenced for his crime; but, by law, was obliged to be burned, or branded, in the hand. An application to the Crown resulted in his being spared this degrading mark of the criminal; but he had not been pardoned. Thus the one man who could have cleared up the mystery of Coote's death was not allowed to do so.

After his acquittal, Mohun thanked his peers for their leniency, and vowed that he would lead a better life. For some years he kept his word. He began to attend debates in the House of Lords. He spoke fre-

\* *Benefit of Clergy* was a privilege of persons who were "clerks," in the days when no clergyman could be punished by a lay tribunal. The test applied was, whether the person could read; and in course of time, everyone who could read claimed Benefit of Clergy, whether he was in holy orders or not.

quently, and with much commonsense and blunt wit. He was even sent on one or two foreign missions of a diplomatic kind. And, in fact, he bade fair in middle life to wipe out the stain on his name caused by the riotous proceedings of his youth and early manhood.

But it was fated that he should not end his life peacefully. The death of Lord Mohun was a fitting termination to his stormy life. For many years he had been carrying on a lawsuit in Chancery against the Duke of Hamilton, and one day in November, 1712, the two opponents met at an examination of witnesses before a Master in Chancery. One witness was an old servant of Mohun's; and after the proceedings were over the duke said, "He has no truth or honesty in him." Mohun could not brook this. "He has as much truth and honesty as your grace," he replied. A challenge followed; and on the following Saturday morning the duellists met in Hyde Park.

Colonel Hamilton came to second the duke; and a notorious Irishman named Macartney arrived on the ground with Mohun. "My lord duke, these two gentlemen shall have nothing to do," said Mohun. Macartney observed "I had a commission for it." Then Macartney said, "We will take our shares," to which the duke answered, "Here's my friend, he will take his share in my dance."

What followed is more like the proceedings at a cowboys' duel with knives in a dark room than like any other duel recorded in England. The seconds fenced in regular style, but the two principals flew at each other's throats. Thrust, thrust! Stab, stab! In five minutes they were both on the ground. Mohun was simply riddled with sword-thrusts. The duke, badly wounded, crawled towards his enemy. The seconds

rushed up ; and somebody, either Mohun or Macartney, stabbed the Duke of Hamilton to the heart.\*

Both the duellists died ; and there were not wanting those who said that Lord Mohun had been set on by the Whigs to kill the Tory duke.

\* This is the account given by Col. Hamilton to the Privy Council. (*Dartmouth MSS.*, p. 313 : *Historical MSS. Commission*, 11th Report.)

## XVI.

### THE ETHICS OF ADVOCACY.

#### *Trial of Courvoisier for the Murder of Lord William Russell.*

NORFOLK STREET, Park Lane, is a typical West End street of the lesser kind. With its small, unpretentious houses, it affords desirable town residences for bachelors, widowers, and widows who must live in the great world of Society, but have no great superfluity of riches. No. 13 (the superstitious will at once perceive something ominous in the number) was, in the year 1840, occupied by Lord William Russell, a scion of the house of Bedford, and great-uncle to the celebrated Lord John.

The house was not large. It was very narrow, only one room wide, and was made up of—

*Basement:* Kitchen and pantry. Area, front and back.

*Ground Floor:* Hall or passage; dining-room.

*First Floor:* Front drawing-room; back drawing-room.

*Second Floor:* Bedroom over front drawing-room; unused room; dressing-room and bathroom.

*Third Floor:* Three bedrooms.

*Attic Floor:* Front room occupied by cook and housemaid; back room occupied by my lord's valet—a Swiss named Courvoisier. The wall between these two rooms was a thin one of lath and plaster.

The back area was enclosed by a high wall. It had no outer door, and was only accessible by a door out of the pantry, and a door and a flight of steps at the end of the ground-floor passage, opposite to the front door.

In this house Lord William Russell lived. He had no family, and his establishment consisted of a coachman and a groom, who lived at the mews hard by, and the cook, housemaid, and valet, who resided on the premises. Lord William was an old man, 73 years of age.

On the evening of the 5th of May, 1840, his lordship spent a quiet evening. He dined alone at about eight o'clock; and after dinner sat in the back drawing-room until about eleven, at which hour he retired to his bedroom on the second floor. Courvoisier, the valet, saw his master to bed; and before midnight the house was locked up, lights were out, and the servants retired to their attics.

Next morning the housemaid, Sarah Manser (the contemporary reports give her name as "Mansell") rose at her usual hour, half-past six, dressed, and went downstairs. In accordance with her usual custom, she knocked at the valet's door on her way down. The first room she entered was the back drawing-room, where she found the writing-desk turned round, and papers scattered about in disorder; but this was nothing unusual, for the master was not a tidy man. What was unusual, however, was to find the kitchen screwdriver lying in the room.

After opening the window, Sarah proceeded to the dining-room floor. A strange sight met her eyes. In the passage was "a regular litter." Her master's cloak, opera-glasses, and trinket box were on the floor, apparently thrown down in haste, and she perceived a napkin,



tied up at the corners, which proved to contain plate. This looked like burglary. Somewhat alarmed, the housemaid ran into the dining-room, threw open the shutters, and looked round. Her suspicions were confirmed, for drawers and cupboards were standing open, and quantities of plate were scattered about the floor. The whole place was topsy-turvy.

Thoroughly scared by this time, Sarah ran upstairs and roused the cook; and then ran to the valet's room and rapped importunately on the door. The valet opened to her. He was fully dressed except for his coat. "What is the matter?" he asked. "Burglars! Robbers!" (The cook had tumbled out of bed by this time and donned some clothing.) "Did you hear anything in the night?" "No," he answered; "did you?" "Come down and have a look! We might have been murdered in our beds. They've turned everything upside down!" And the girl fairly dragged Courvoisier downstairs. Having shown him the confusion, she suggested that they should wake the master, and tell him what had happened. Courvoisier consented, and together the two went to the bedroom door.

A knock elicited no reply; but that was nothing unusual. The valet opened the door, and the two went in. He walked to the windows to draw up the blinds, as valets usually do when they call their masters. She, full of her story, hastened to the bedside. But as soon as the light streamed into the room she gave an ear-piercing shriek. There lay Lord William Russell in the bed, his throat cut from ear to ear.

Without waiting to see more, the maid flew downstairs and out into Norfolk Street, shrieking and shrieking again, "Murder! Murder!"

Her blood-curdling yells brought out servants from

other houses, and the groom and coachman from the mews. A policeman,\* named Baldwin, on the beat, was soon on the spot. Somebody ran for a surgeon. An excited crowd of butlers, footmen, and other menials of Park Lane and its environs invaded No. 13, Norfolk Street.

That the aged nobleman was dead there was no doubt. There was as little doubt that he had been foully murdered. The surgeon and the policeman carefully investigated the room, and found no trace of a struggle. The blood had saturated the bed and run through to the floor; but in no other place was there any trace of blood or any suspicious mark. Obviously the murderer had crept into the room quietly, and had murdered Lord William while he slept.

Other police officers were summoned, and these made a thorough investigation of the premises. They requested Courvoisier to show them over the house, but the wretched valet seemed too much broken down to render much assistance. He did, however, conduct Baldwin to the various rooms, and when they came to the pantry they found the door slightly open. A very cursory inspection revealed that this door had been tampered with; for there were marks on both door and post, as though some blunt instrument, such as a crowbar or screwdriver, had been used to prise the door open. "Ah!" said the valet, "this is where they must have come in." "It looks like it," said the policeman. Further clue there was none.

The "new police" were not lacking in energy. The inspector in charge of the case (Tedman) found in the course of the day that several articles were missing—a

\* The police force had only been recently established to take the place of the old watchmen.

gold watch, some rings, a £5 and a £10 note, besides some spoons and forks of silver. The three servants at once offered to have their boxes searched, and on inspection the trunks revealed neither any of the missing articles nor anything else in the least degree suspicious.

Still, the police made up their minds, then and there, that the valet was the guilty man. On this theory, the missing property must be somewhere on the premises; because Courvoisier had not had an opportunity to dispose of it elsewhere. From the floor of the basement to the ceiling of the attics, every inch was ransacked. Not one of the missing articles was found. Could anything have been put down the drains? No sooner was the suggestion made than workmen were sent for to dig up the drains and investigate.

The drains yielded nothing; but collateral operations gave important results. In the pantry, behind the wainscot, were found a purse, some gold coins, and some rings (these Lord William's); and behind the skirting-board under the sink was a £5 note and a Waterloo medal. The police promptly confronted Courvoisier with these *pièces de conviction*, and informed him where they had been found. "I know nothing about them," said the valet. "I am innocent. I never saw that (the medal) before. My conscience is clear." Encouraged by these finds, the police continued to pull No. 13, Norfolk Street to pieces; and found a number of other small articles—some under the hearthstone in the kitchen. Meanwhile, they took Courvoisier into custody. But still the missing silver plate could not be found.

A day or two after, the rumour went round that a more direct clue had been discovered. The valet had

asked Inspector Tedman to bring him a change of linen. The officer repaired to the attic in No. 13, and dived into the prisoner's trunk. It will be remembered that on the morning of the murder this trunk had been searched by the police, and nothing had been found. This time the inspector discovered, wrapped inside a soiled shirt, a pair of white cotton or thread gloves, spotted slightly with blood. Prosecuting his researches still further, the officer found two silk handkerchiefs, also spotted.

A reward of £450 had been offered for the detection of the perpetrator of the crime.

Courvoisier was not long kept in suspense as to his fate; for about five weeks after his arrest he was put on his trial at the Old Bailey for the murder. Chief Justice Tindal and Baron Parke were the judges; and the prisoner was given the option of a jury half of Englishmen and half of foreigners. He declined the offer, preferring to take his chance with an English jury.

Mr. Adolphus, a barrister well-known in those days as a rather coarse specimen of the "Old Bailey lawyer" (then a term of reproach), opened the case for the prosecution in a speech of a kind seldom, fortunately, heard from prosecuting counsel in modern times. Instead of laying the case dispassionately and carefully before the jury, as his duty was, he pressed the case against the prisoner in most vindictive terms. The most unpardonable part of his harangue was a passage in which he reminded the jury that the prisoner was a foreigner, and that foreigners—as, he said, everybody knew—were accustomed to murder when they robbed. In fact, the speech would have won unqualified applause from Judge Jeffreys or Chief Justice Scroggs, of unhappy memory.

As soon as the evidence began to be given, it became apparent that Adolphus had opened the case "too high." The proof was by no means so deadly as the speech. Phillips, one of the most celebrated advocates of the day, an Irishman of eloquent, if turgid style, led for the defence; and his cross-examination of the prosecution's witnesses was very destructive.

Sarah, the housemaid, said that on the night of the murder the prisoner had complained of the master's temper. He had said, also, "Billy is a rum old chap, and if I had his money I would not stay long in England." What inference the prosecution desired the jury to draw from this below-stairs speech, I am at a loss to understand. She also deposed that on several occasions she had noticed the accused prying into his master's drawers and cupboards. Her account of the terrible morning when she discovered her master lying dead agrees with what has already been set forth; but some attempt was made by the Crown counsel to induce her to say that the prisoner was reluctant to approach the bed.

In cross-examination she was somewhat roughly handled. She admitted that servants often spoke disrespectfully of their masters; and that it was not unusual for them to pry into their master's concerns. She was compelled to say that on the night of the murder she heard nothing; and that the partition between her own bedroom and that of Courvoisier was so thin that she could have heard any noise in his room had she been awake. Most important of all, she was made to recollect that on the 5th of May she had asked the valet to carry into the back area a step-ladder, by which it would have been possible for anybody to climb into and out of the area from next door. She further

admitted that the prisoner seemed a quiet, inoffensive sort of man.

Some of Phillips's questions suggested that it would have been quite as reasonable to charge her with the crime as to charge Courvoisier.

The cook (Mary Hannell) added nothing to the case for the prosecution. But she helped the defence—which was that an outside burglar had committed the crime—by admitting to Phillips that some of the plate had been carried off, and, though advertised for, had not been recovered.

The coachman, who had run in from the mews that startling morning, averred that Courvoisier had appeared to be in great distress. He had kept on exclaiming, "What shall I do! Oh! what shall I do!" Also, "I have been here only five weeks; what shall I do for a character?" Phillips put the question, "Do you not think that the sight of an old man with his throat cut would be enough to unnerve anybody?" and the witness agreed that it would.

Baldwin, the policeman, deposed that he had entered the house immediately Sarah gave the alarm; that the prisoner was sitting behind the door with his hands to his face, moaning; and that the wretched man could not, or would not, at first give any assistance. Further, that he (witness) had examined the place, particularly the back area. In his opinion there had been no breaking in of the back door. On the top of the area walls he had found accumulated and undisturbed dust, showing that nobody could have climbed over.

In cross-examination he was shaken to pieces, so much so that nobody would be likely to believe a word he said. His desire for a conviction had been fairly evident to Phillips, who proceeded to ask him if he had

heard of the reward. No, he had not. Quite sure. Quite. Were general orders read over to the police? Yes, certainly. Had these general orders contained a reference to the reward. Witness thought it possible. Then he thought it probable. Then he admitted that they did contain such a reference. When? Witness was not sure—it was so long ago, he had forgotten. Would he swear that the orders of two days ago did not contain such a reference? No, he would not. Were these orders read over in his presence and hearing? Yes. Did he attend to them? Yes. Would he still swear that the fact of a reward being offered was not present to his mind? Yes, he would. Did he think that if the prisoner was convicted he (witness) would receive any of the reward? With a lofty air, the constable declared that he never thought about it. Phillips, most dramatic of advocates, smiled scornfully, and sat down.

So ended the first day; and it must be said that the odds were all Lombard Street to a China orange that the prisoner would be acquitted.

Next morning, as Phillips entered the Court, the prosecuting solicitor handed him a paper. Phillips opened and read it; and at once called up Mr. Clarkson, his junior. The new matter was sufficiently startling. For it was the proof of a new witness, just discovered, who was, apparently, able to produce in Court the missing plate, and to trace it to the prisoner. What was to be done? As Clarkson and Phillips were in earnest converse, they were informed that the prisoner—just brought into the dock—wished to speak with them. They walked over to him. Before they could speak, he leaned over the rail and said, quite coolly, "Gentlemen, I have sent for you to tell you I committed the murder." "Good God!" ejaculated Phillips. Then, more calmly,

"Of course, then, you are going to plead guilty." The prisoner looked amazed. "No, sir, I expect you to defend me to the uttermost."

This was indeed a bombshell. The two barristers retired to consult. "I must throw up my brief," said Phillips; "I cannot go on after such a confession." But Clarkson would not have it. He pointed out that the prisoner was entitled to be defended for his life; and at last, as Phillips persisted in his resolution, suggested that they should see Baron Parke privately. The leader agreed. Parke had no difficulty in deciding the question. "If the prisoner still requests you to defend him, you are bound to do so; and to use every fair argument from the evidence." (This conversation with Baron Parke was confidential; and the presiding judge, Chief Justice Tindal, knew nothing of the confession.)

Phillips thereupon decided to continue the defence; and proceeded all the morning with the successful cross-examination of further police witnesses. Particularly was he successful in upsetting the evidence as to the blood-stained gloves and handkerchiefs, found after the prisoner's arrest in his trunk. He elicited that a thorough search of the trunk had been made on the morning of the 6th of May. He forced one detective to admit that in that search the gloves and handkerchiefs could not have been missed, except by a blind man. And, in fact, he convinced the jury—as the fact very likely was—that the incriminating articles had been put into the trunk by the police to make evidence.

Had the trial stopped there, Courvoisier had been acquitted. But it did not stop there. At the end of the morning Adolphus called "Madame Piolaine"; and a typical inhabitant of Soho stepped into the witness-box. As she told her story, for the first time the case



to look black against the prisoner. It was a strange tale. Witness's husband was a partner of M. Vincent, and they two kept the Hotel Dieppe, in Leicester Place. Witness practically managed the establishment. About a week before the murder, one Jean, whose surname she did not know, came in to pay his respects to her. Jean had been a waiter at the Hotel Dieppe for a period of about six weeks some years before. He merely looked in and said, "Good-morning," and inquired after madame's health. In reply to inquiries, he said he was in a good situation. Did not say where or with whom.

A week afterwards, Jean called again—just passing, he said, and thought he would drop in. This was the day before the murder. He had a brown-paper parcel. Might he leave it in the care of madame? Why, certainly, he might. Sorry to give any trouble—he would call on the following Tuesday for his package.

Madame put the parcel into a cupboard; and, though Jean did not call for it on the following Tuesday, she thought nothing of that. Some five weeks afterwards—in fact, yesterday, her attention was called to the parcel by M. Vincent.\* In consequence of what he said, she showed him the parcel. She, Vincent and her husband, consulted an English friend, who advised them to see an attorney. They brought in an attorney, and he, in their presence, opened the parcel.

"Here," said the witness, as a packet was handed to her, "is the parcel."

"What did it contain?"

\* M. Vincent had read in a French paper a paragraph which suggested that the London police would do well, seeing that Courvoisier was a foreigner, to make enquiries for the missing plate at the foreign hotels in London. He read this paragraph to Mme. Piolaine.

"It contained all the things that are here now"—and witness held up the missing plate. Of its identity there could be no doubt, for it bore the Russell crest, besides answering the description given by the cook in her evidence.

Continuing her narrative, the witness said that, with her solicitor, she immediately put herself into communication with the prosecution; and this very morning had been taken to Newgate prison. Out of a row of men shown to her she had picked out Jean. Jean was Courvoisier, the prisoner in the dock.

Phillips rose to cross-examine with a heavy heart. He attacked the witness's credit. He insinuated that her hotel was a common gaming-house, if not something worse—all of which she stoutly denied. In fact, the Frenchwoman's story was left practically unshaken. Vincent, M. Palaine, and the solicitor corroborated at various points as to the opening of the parcel, and the reason why it was opened. And it came out that the silver was wrapped in an old jacket, and that each article was also wrapped up so as to prevent the metal from chinking.

After this evidence, Phillips had to make his speech for the defence. He called no witnesses—and in those days he could not put the prisoner in the box. Considering the fact that the confession was ringing in his ears, the Irishman's address was a wonderful one. He attacked Adolphus for his ferocious opening speech; he attacked the police for manufacturing the evidence of the gloves and handkerchiefs; he held Baldwin up to execration as a man who would swear anything in order to obtain a reward. So all was plain sailing. When he came to Madame Duane's evidence he had to be more wary. He dealt with it very skilfully. First, he

complained that it was sprung on the defence at the eleventh hour, so as to render it impossible to make inquiries as to Madame Piolaine—"this Soho *hotel-keeper*," said he, with a scornful accent on the "hotel." But even if her evidence was accepted fully, what did it amount to? Not murder, but theft.

Ought an advocate to defend a prisoner whom he knows to be guilty?—I do not say whom he believes to be guilty; because a barrister is just as likely to be wrong in his belief as any other man. I remember a case where counsel defended a prisoner for a serious crime, and secured an acquittal. "How the jury could let him off," said he, "is more than I can understand." Yet the jury were right; as was conclusively proved some time afterwards. I myself had an experience some years ago—not in a criminal case, but in one running very near it. My client, a business man, set up as a defence to an action on a bill of exchange (*a*) that he owed no money to the plaintiff to whom he gave the bill; (*b*) that the plaintiff knew it; (*c*) that the plaintiff owed him (the defendant) money; yet that (*d*) he had given the plaintiff a bill for £200 because the plaintiff worried him to do it; and (*e*) that he had never asked for the return of the bill. I did not believe this preposterous story; and told my client he would be prosecuted for perjury. Yet the tale turned out to be a plain statement of fact. The moral is, that a barrister is not judge and jury.

But this hardly answers the other question—where the barrister *knows* the prisoner to be guilty. My own impression is that, as the law puts the onus of proof on the prosecution, and allows a man to escape unless the proof of his guilt is beyond reasonable doubt, Parke's standard is the right one: "Use all fair arguments from the evidence." A prisoner would be allowed, by public opinion, to defend himself, however guilty he might be. Why should he not, then, employ a skilled agent to defend him?

Fortunately, the difficulty rarely arises. I have never, personally, known a case where a prisoner has

made him the wisest possible of counsellors for the raw Scottish favourite.

By his advice Carr walked. "Show preference for the English," Overbury advised, "or else they will clamour against you on account of your nationality." And the canny Scot profited by the counsel; and did not, as he had intended, introduce to preferment a host of kith and kin and friends and acquaintances from over the border. Overbury also counselled his man to lay aside haughtiness; and to adopt an affable demeanour to all. And in affairs of State, though Carr's hand wrote State papers, and Carr's tongue pronounced advice to the King in Council and in private, it was in Overbury's brain that the wisdom originated.

But in an evil hour they quarrelled—an evil hour for both of them; for both came to ruin by it. The cause was the usual cause for quarrel between bosom friends—a woman. The Viscount Rochester engaged himself in a violent amour with Frances, a young and beautiful woman who had been married to, but was never the wife of, the Earl of Essex. When James I. came into England, he viewed with particular favour the houses of Devereux and Howard, which had suffered much on account of Mary, Queen of Scots. He restored to the infant Devereux the earldom of Essex; and, without troubling for the consequences, married him to Frances Howard. The bride was thirteen; the bridegroom, fourteen. In accordance with the practice of the time, the young Earl of Essex was sent on the grand tour to complete his education, while his countess returned to the schoolroom. When, at the age of twenty-one, the young nobleman returned to claim his wife, he found her a beautiful woman—the most beautiful in England, so many declared. Overjoyed, Essex hastened

to claim the privileges of a husband; but was amazed and horror-stricken (for there was nothing in his manners or his person to make him repugnant to a woman) to find himself coldly repulsed. The countess would have nothing whatever to do with him.

Before long, the injured husband discovered the cause and author of his injury. Rochester, the omnipotent favourite, the Adonis of the Court, had fallen violently in love with the Countess of Essex, and, with James's connivance, had pressed his suit. He first commended himself to the lady's good graces by some passionate letters, which were written for him by Overbury. One step led to another, until at last the lovers found themselves meeting often at the house of a Mrs. Turner, a dependent of the Howard family.

Now comes the first hint of the Overbury tragedy. Rochester and the Countess of Essex were not content to live this kind of life. They wished to marry. The Countess had never been more than a nominal wife to her husband; and it was suggested that if the King could be induced to exercise his influence, the Earl of Essex might consent to a divorce, or decree of nullity of marriage, and Frances might marry Rochester.

When Overbury heard of this plan, he was furious. He had willingly helped his patron and pupil in an amour; but he did not intend to let him marry the lady. For one thing, she was a Howard; and Overbury disliked that family. For another thing, he feared he might lose his influence over the royal favourite if Carr married a woman to whom he was devotedly attached.

One day, Overbury and Rochester were overheard in the Long Gallery at Whitehall in the course of a heated debate, in which Overbury said, "Well, my lord, if you do marry that base and filthy woman, you will

utterly ruin your honour and yourself. You shall never do it by my advice or consent, and if you do, you had best look to stand fast." Rochester answered, "My own legs are straight and strong enough to bear me up; but, in faith, I will be even with you for this," and flung off in great choler.

Nevertheless, the quarrel did not seem to make any difference in the relations of the tutor and his pupil. Overbury continued to advise Rochester as before. But the infatuated lover had told his mistress of Overbury's language, and of his threat; which undoubtedly was meant to convey to Rochester that if he offended Overbury in this particular the latter would make use of some dangerous secrets he possessed. The Countess consulted Mrs. Turner, the go-between; and Mrs. Turner took counsel with one Weston, a creature of hers. Franklin, an apothecary, was called into the consultations, also. Rochester, for his part, betook himself for advice to Henry, Earl of Northumberland, a dissolute, lewd courtier. Amongst them, the conspirators hatched the most devilish plan it would be possible to conceive.

First, Rochester suggested to the King to offer Overbury an embassy to Russia. Overbury was nothing loth; but Rochester said, "I cannot spare you. Decline the offer; and I will see you quit of any consequences." Whereupon Overbury declined the employment. Rochester privately represented this to the King as a contempt of the royal commands; and James caused Sir Thomas to be arrested and thrown into the Tower. I need hardly say that an arrest for such a cause was absolutely illegal; and the judges would have been bound to set Overbury free had he sued out of a writ of *habeas corpus*.

But Overbury, though a lawyer, did not dream of

disputing the legality of his arrest. Doubtless he knew it to be unlawful, but he preferred to take his chance of the royal clemency ; which he did not doubt would be extended to him, on the favourite's intercession, at an early date. In five months, however, Overbury died in the Tower, where for that period he had been undergoing the rigours of close confinement, with Weston as his keeper. He became very ill. At times he vomited violently. And when he died his body was such a mass of corruption that he was buried hastily in a grave within the Tower. During the five months of his imprisonment, Sir Thomas was not allowed to see any of his friends ; but he saw people sent to him by the Viscount Rochester, who promised him a speedy release. Overbury knew that a word from the favourite would end his imprisonment, and he wrote, time and time again, entreating his friend to speak that word ; but he only received evasive answers.

After the death of the luckless prisoner in the Tower, rumours, persistent and insistent, circulated in the City and the Court that he had been poisoned. The story of the quarrel with Rochester had spread, as stories do spread when repeated by lackeys. The Overbury family did not hold their tongues. And tales were told, with every circumstance of date and method, that Rochester, the favourite, Rochester, the adulterer, had caused the death of his friend. The Puritans began to speak of Uriah the Hittite, of Jezebel, of the daughter of Herodias, and other Scriptural characters whose names sound none too pleasantly in the ears of breakers of the seventh commandment.

But Rochester was unscathed by the popular clamour. He had induced the King to interest himself in the love affair. And to interest himself to the extent of procur-



ing the Earl of Essex to consent to a decree of nullity, dissolving his union with the woman who was his wife in law only. The lady was duly married to her handsome lover; and, so that she should not lose in rank by her marriage, James raised Rochester in the peerage by the title of the Earl of Somerset. Never did sin seem more triumphant, or virtue less exalted. This change in the situation occurred some time before Overbury died.

But two years, or a little less, after Overbury had perished, it was reported to James that an apothecary's apprentice, named Franklin, had been boasting, abroad, that he had poisoned Overbury on the instigation of the Earl and Countess of Somerset. By this time Somerset was not so necessary to the King as before; nor so agreeable. Whether conscience pricked him, or for what other reason, he had lost the gaiety of spirits so necessary for a favourite. His good looks, also, began to disappear. And, moreover, Somerset's enemies had just introduced at Court George Villiers, a youth more beautiful than Carr, and even more fascinating—not to say much more able.

The Royal Solomon sent for Chief Justice Coke and Bacon, Attorney-General; and bade them unravel the mystery of Overbury's death. They immediately set to work. Sir Jervis Elwes, Governor of the Tower; Weston, the keeper of Sir Thomas Overbury; Franklin, the apothecary; and afterwards Mrs. Turner, the go-between, were examined privately. It is said that Weston and Franklin were tortured to make them confess; and the manners of that age make the story but too probable. It is true that Coke declaimed against torture on another occasion, and declared it to be unknown to the law of England. But Coke was very like one of

those people so well acquainted with Holy Writ as to be able to produce a text to justify any argument or any action. Coke was such a master of the Common Law that he seemed able to produce both principle and authority to justify any opinion he held at the time, or any action he chose to undertake.

The result of the examination of these people, and of the stories told by Overbury's old servants, was that Weston was put on his trial at the Guildhall, London, on the 19th of October, 1615. Curiously enough, Coke presided over his trial—an anomalous position for one who had got up the case for the prosecution. Had anyone else done it, Coke would have denounced the proceedings root and branch.

The trial of Weston was curious, and is worth study from the historical point of view, as showing the manners and customs of our forefathers in these matters. The indictment charged him that he, "being of the age of sixty years or thereabouts," administered poison to Sir Thomas Overbury in the Tower, on four separate occasions, to wit:—

(1) "Certain poison of green and yellow colour, called rosalgar," mixed with broth.

(2) "White arsenick," given as a medicinal powder.

(3) Mercury sublimate, mixed with tarts and jellies.

(4) Mercury sublimate, administered as a clyster.\*

To this indictment the prisoner pleaded "Not guilty;" the jury were sworn; and then the question was asked, "How wilt thou be tried?" Instead of answering, "By God and my country,"† the prisoner said, "By God;" nor could the exhortation of Coke and the other

\* An enema.

† This question and answer are remains of the time when trial by jury was voluntary, not compulsory.

judges induce him to speak the usual formula. Coke finally rehearsed to the prisoner what would be his fate if he persisted in declining to speak. According to law, he would be liable to the *peine forte et dure*, which was the "penance" by weight, cold, and famine. The recalcitrant one was to be stretched on the ground, stark naked, in the open air, near the prison (that was penance by cold). On him were to be placed weights, at first as much as he could bear, *afterwards, increasing gradually, more* (this was penance by weight). On alternate days he was to have a piece of coarse bread, and a drink of water out of the sink or puddle nearest to the spot where he lay; so that on the day when he had to eat he should not have to drink, and on the day he had to drink he should not have to eat withal.

Such were the means at Common Law of persuading a prisoner to submit to a proper trial. Few there were that did not thankfully elect to be tried "by God and the country."

With this terrific torture Sir Edward Coke threatened Weston; but still the prisoner refused to give way. At last the Chief Justice and his brethren decided not to apply the *peine forte et dure*, at any rate for the present. "I perceive," said he, "that certain great ones are confederate with thee." In truth the Earl and Countess of Somerset had sent one to persuade the prisoner to this course of action, in order that they might be spared a public exposure in a Court of Justice. Coke divined this, and resolved to defeat it.

"In order," said he, "that all present may be satisfied of the King's excellent justice, I will Sir Laurence Hyde, the Queen's Attorney (General) to manifest unto the audience the guiltiness of this man; and if in the declaration thereof he may meet with any great persons

whatsoever, he shall boldly and faithfully open whatsoever is necessary, and he can prove against them." All of which seems to show that the trial was not so much to try the guilt of Weston, as to see whether anything could be found to ruin Somerset.

If that was his object, Coke succeeded to admiration. Sir Laurence Hyde opened the case in a long speech, telling the story of the quarrel between Overbury and the favourite, and alleging bluntly that Weston was bribed by the Countess for £20 down and a promise of more to poison Overbury, and that her husband was a consenting and assisting party. Mrs. Turner was declared to be the principal agent, next to Weston; and it was hinted that Sir Jervis Elwes was not innocent in the matter.

In order that this might not be thought a mere string of assertions by counsel, Coke ordered to be read the examinations of the witnesses who were to have been called, and the confession extorted from the prisoner. Two old servants of Overbury deposed that their master had been, since they knew, a healthy man. One of them said he had overheard the altercation in the gallery at Whitehall. The other said that Sir Thomas would have gone over on the embassy to Russia, but was dissuaded by Somerset.

Sir Thomas Monson said he had recommended Weston to the Governor of the Tower at the request of the Countess. A servant of Monson's testified that he had received "divers tarts and jellies" from the Countess to be carried to the Tower for Overbury.

The most remarkable examinations, however, were those of Elwes, Mrs. Turner, and the prisoner himself. The Governor of the Tower admitted that Weston was appointed Overbury's keeper in consequence of the

request of Sir T. Monson. He further went on to say that one day Weston met him, carrying Overbury's supper in one hand, and a glass tube in the other. Weston stopped him, and said, "Sir, shall I give it him now!" Whereat the Governor asked him, "What?" Weston replied with another question, "Why, sir, know ye not what is to be done?" Sir Jervis was (as he said) much surprised, and dragged from Weston a confession that the vial contained poison. A strong remonstrance and rebuke from the Governor caused Weston to say that he would not do it. But after Sir Thomas was dead, Weston confessed that an apothecary had £20 for administering a clyster to the deceased, which clyster was poison. It is obvious, on this statement, that Sir Jervis Elwes was a party to the crime. For it is clear that had he been innocent he would have dismissed Weston at once after the first conversation.

Mrs. Turner's evidence was simply to the effect that Weston was an old servant of hers, who had been placed in attendance on Overbury through the Countess.

The confession of the prisoner was a full admission of his guilt; but it had been obtained from him in a manner worthy rather of a French *juge d'instruction* than of an English tribunal. As the statements of the other witnesses were extracted from them, the wretched man had been brought up and interrogated by Coke, and, bit by bit the following confession had been dragged from him: I was in the service of Mrs. Turner, and had been employed by her to arrange meetings at her house between Somerset and the Countess. It is true I showed the glass to Elwes, and he persuaded me not to administer the poison. I had divers tarts from the Countess to give to Sir Thomas, with warnings not to taste of them myself. I admit I thought they were

poisoned. Mrs. Turner gave me some drink to give to Overbury, and promised me a great reward. She told me not to drink thereof; and I suspected that it was poison. Two of the Countess's servants came often to inquire of me how Sir Thomas did, and what he would eat; and they delivered me jellies and tarts, which I gave him and he did eat thereof. I demanded of Mrs. Turner my reward. She answered I was to have no reward until Sir Thomas was dead. After his death I received secretly of Mrs. Turner from the Countess £180. An apothecary and I administered a poisoned clyster to Overbury, of which he died.

These documents having been read in open Court, the Lord Chief Justice adjourned the trial, and requested the King to send to Weston two divines no less eminent than the Bishop of London and the Bishop of Exeter. These reverend prelates so worked upon their man as to induce him to put himself upon his trial in the regular way; and accordingly the prisoner was brought up to the Guildhall again four days later, and, on being asked how he would be tried, replied, "By God and my country." The prisoner was condemned already; but the form of trial was gone through. The witnesses whose depositions had been read gave their testimony before the jury; and, on this evidence, and his own confession, Weston was found guilty of murder and sentenced to be hanged at Tyburn. The sentence was duly carried out.

Justice was not glutted by the death of the miserable instrument of the crime. It was necessary to bring to the Bar all who had art or part in the death of Overbury. The first to take her trial was Anne Turner, who was sentenced to death, and was duly executed on the 7th of

November, 1615. Sir Jervis Elwes followed her to the scaffold the following week; ten days afterwards the apothecary who administered the clyster, James Franklin by name, was sentenced. Mrs. Turner and Elwes admitted the justice of their doom before they died; but the apothecary threw a new light on the subject. He admitted the poisoning, and that he had supplied the drugs for the earlier attempts. But he went on to say that after the clyster was administered, the victim took so long in dying that he and Weston stifled him with the pillows of his bed. So that although the Earl and Countess, and Elwes, and Mrs. Turner believed Overbury to have died of poison, in fact he died of suffocation. Thus, all those who had been previously executed for the crime had been wrongly convicted.

The Earl and Countess of Somerset could hardly be allowed to escape when the humbler tools they had employed had been made to suffer. They were indicted as accessories before the fact, which, in murder, is of equal guilt with the actual perpetration of the crime. The unhappy woman confessed her guilt, and pleaded guilty. Somerset denied his participation in the offence, and was tried before his peers in the Court of the Lord High Steward. The cast-down favourite made a bold defence. He denied altogether any enmity against Overbury. True, they had quarrelled; but where were the friends who had not at some time or other fallen out? He did not mean to let his friend interfere with his marriage; but there was no need to poison him for that. As to the confessions, they ought not to be received against his word. His wife had admitted her guilt; but had exonerated him. This was the line of his defence.

But the Earl of Somerset had to contend with an adversary who could not be put off by his specious

speeches. The brightest intellect of that, or, perhaps, of any other day in England was in arms against him. Francis Bacon, Attorney-General, prosecuted for the Crown. The speech of the great philosopher is extant, and it would bear comparison with the great masterpieces of forensic eloquence. His description of the motive for the crime is characteristically Baconian: "When Overbury saw he was like to be dispossessed of my lord's grace, which he had possessed so long, and by whose greatness he had promised himself to do wonders, and being a man of an unbounded and impudent spirit, he began not only to dissuade, but to deter him from the love of that lady; and finding him fixed, thought to find a strong remedy. And, supposing that he had my lord's head under his girdle, in respect of communication of secrets of State, therefore dealt violently with him, to make him desist with menaces of discovery and the like. Hereupon grew two streams of hatred upon Overbury, the one from the lady in respect that he crossed her love and abused her name (which are furies in women); the other of a more deep nature from my Lord of Somerset himself, who was afraid of Overbury's nature, and if he did break from him and fly out, he would wind into him and trouble his whole fortunes."

Here speaks the author of the essays.

The proof was clear, the peers unanimously found Somerset guilty, and he and his Countess were condemned to be hanged. But to the everlasting disgrace of King James's justice, they were reprieved, and finally pardoned, and allowed to go at large.

I have traced the origin, discovery, and punishment of this murder—a crime scarcely paralleled in English



history. Now for a word or two of the curious facts that transpired at the trial of Mrs. Turner. It came out in her case that she had practised witchcraft. She and the Countess of Essex had employed a Dr. Forman, of Lambeth, to practise magic for the purpose of procuring the Earl of Somerset to love the Countess, and Sir Arthur Mainwaring to love Mrs. Turner. An extraordinary letter was produced from the Countess to Forman, in which she addressed him as "Sweet Father." There were also exhibited in court "enchancements" written on parchment. In one of these were contained all the names of the Blessed Trinity mentioned in the Scriptures. Another contained "+.B.+C.+D.+E." A third was inscribed with all the names of the Holy Trinity, as well as the figure of a man, on which was written the word "Corpus." To make this diabolical document more fearsome, there was fastened to it a little piece of a man's skin. On other parchments were "the particular names of devils" who were conjured to torment the Lord Somerset and Sir Arthur Mainwaring if their loves should not continue, the one to the Countess, the other to Mrs. Turner.

The Lord Chief Justice treated all this farrago of nonsense quite seriously. When he sentenced poor Mrs. Turner, he told her that she had the seven deadly sins; for she was a w——, a b——, a witch, a felon and a murderer, and, to crown all, a Papist!

The wonder is she was allowed a death so merciful as hanging!

## XVIII.

### THE GREAT IMPOSTOR.

#### *The Tichborne Case.*

THE story of Castro, *alias* Orton, is one that ought to begin "Once upon a time," so like is it to the stories of the giant-killer, the beanstalk, and other tales of the nursery. But as it actually happened, it may be as well to give dates and facts.

In the year 1845 a new boy was admitted to the great Roman Catholic school at Stonyhurst. He was a queer boy. Though he was of an old English family—for the Tichbornes of Hampshire have a long pedigree—and was 16 years of age, the boy spoke but very broken English. This was not to be wondered at when it was considered that Roger Charles Tichborne had been bred in France; and that although his father, James Francis Tichborne, was a thorough Englishman, his mother, Henriette Félicité, had spent practically all her life in Paris.

The new philosopher—for so at Stonyhurst they call, or used to call, the pupils who studied for a secular career—was not a bad fellow. He made friends with a number of bright youths; he played the usual games; he indulged in the usual mischievous pranks of boyhood. He was rather fond of music, and acted in amateur theatricals a time or two. And in the holi-

days he went, as a rule, to the house of some relative. Chiefly he resorted to his uncle's, Sir Edward Doughty's.

For "Frenchy," as they called him, was heir-presumptive to a baronetcy and large estates. His father was a third son. The eldest, Sir Henry James Tichborne, was a baronet, the head of the house. But he had no issue, and died in 1845, leaving the Tichborne title and estates to his brother Edward. The latter had succeeded to the estates and taken the name of Doughty, and had been made a knight—Sir Edward Doughty. Now both the Doughty and Tichborne estates were entailed in the male line; and as Sir Edward had only a daughter, and no son, James Francis Tichborne became heir-presumptive to the baronetcy and both estates, with young Roger, his son, next in succession. It was this sudden change in circumstances from the position of a son of a younger branch to that of the heir-presumptive to an old title and vast possessions that caused James Tichborne to remove his son to Stonyhurst, so that the boy could be brought up as an Englishman. Mrs. Tichborne grumbled long and loud at losing her boy. She was a cantankerous woman, who had quarrelled with all her husband's relations, and who made Roger's life a burden to him.

In 1848 Roger left Stonyhurst, and spent about a year being "coached" for Sandhurst. He ultimately passed for the cavalry (in history, geography, English, French, and fortifications) in July, 1849, obtained a commission in the Carabineers, and in October, 1849, joined that dashing regiment in Ireland. He still had many "Frenchy" ways, and his brother officers were at first inclined to make fun of him, but they soon grew to like him. From 1849 to 1852 the Carabineers were quartered at Clonmel, Cahir, and Waterford.

Meanwhile, much occupied the young man's mind besides his military duties. Running over on leave from time to time to England, he saw a good deal of the Doughtys; and, in 1852, fell in love very violently with cousin Kate, the only child of the house. She smiled on his suit; but her father declared her too young to choose—she was seventeen. "Wait three years," said papa, "and then if you are both of the same mind, and can get the Church's dispensation, I shall not object further."

The young lover had to bear this decree with what fortitude he might. He left Tichborne House, after a tender farewell, on the 22nd of June, 1852, being resolved to go abroad. He hunted the winter in Hampshire, sold out in January, 1853, and in March of the same year, accompanied by Moore, a servant, he embarked at Havre in *La Pauline* for Valparaiso. He reached that port on the 19th of June, 1853; was at Santiago in December, 1853; crossed the Andes; and arrived at Buenos Ayres on the 13th of February, 1854. His last letter home was dated April 1st, 1854, and was from Rio de Janeiro. Meanwhile, Sir E. Doughty had died, and Roger's father had become Sir James Tichborne.

On the 20th of April, 1854, Roger Charles Doughty Tichborne embarked at Rio on the *Bella*, Captain Birkett, bound for New York. Four days afterwards, a vessel, out at sea, picked up pieces of wreckage, amongst other things a longboat bearing the name *Bella*. That was the last ever heard of the ill-fated ship. No survivor ever appeared to give any account of how she met her doom. The underwriters paid the insurance, and everybody believed that the *Bella* had gone down with all hands. The Court of Probate

granted proof of the young Tichborne's will to the executors—Messrs. Gosford and Slaughter.

I say "everybody." There was one exception. The new Lady Tichborne did not believe it. To use the words of Mr. Hawkins, "She laboured under an innocent delusion that some day or other Roger Charles Tichborne would turn up again, and she was . . . a ready tool for imposture, suffering her own reason to be blinded and her understanding baffled by anything which seemed to give sanction to her delusion." Sailors found her house a ready asylum so long as they could fill her ears with tales of men saved miraculously from wrecks. And by one of these men the poor lady was told that "he had heard" how some men, passengers and crew of the *Bella*, had been picked up by a vessel bound for Australia, and had been landed at Melbourne.

The kind of delusion from which Lady Tichborne suffered is not an uncommon one. I know a case at the present moment where a young woman of twenty parted from her sailor-lover, to whom she was to be married on his return from the voyage. Alas! he never returned. The ship was reported a total loss, and no survivor has ever been seen. But for fifty years that woman has expected the return of her lover. Her house is kept swept and garnished. She wears clothes that are an exact facsimile of those she wore when she parted from her sailor, so that, if he should see her in the street, he will know her again. She obstinately refuses to believe that he is dead, and as obstinately affirms that he will return and marry her. She is now seventy years old, and has persevered in this strange conduct for half a century.

It is easy to understand how a woman with such a

délusion in full possession of her mind might be imposed on by the unscrupulous and the designing.

Sir James died in 1862, and immediately Lady Tichborne began to advertise. Meanwhile, Alfred, her younger son, assumed the title and the estates.

A person named Cubitt, of Melbourne, was in the habit of advertising in the *Times* the virtues of his "Missing Friends' Office in Australia," and in May, 1865, the Dowager Lady Tichborne saw the advertisement. She at once wrote to Cubitt, and asked for his assistance in discovering the whereabouts of her son. The description she gave of the missing man was this:

"Roger Charles Tichborne is at present thirty-two years of age. . . . He is of delicate constitution, rather tall *and thin*, with very light brown hair and blue eyes."

Cubitt promptly advertised in the Australian papers. He gave the description, "At the present time about thirty-two years of age, is of delicate constitution, rather tall, with very light brown hair and blue eyes." The particulars as to the *Bella* and the shipwreck were also given.

It is a trite observation to make, yet it must be made, that much may depend on a very slight accident. Cubitt, or his clerk, omitted from the description the words "and thin," doubtless by accident. Had this mistake not been made, I doubt very much whether this eventful history would have been written.

There was a man in Wagga-Wagga, a thriving New South Wales township, who followed the occupation of a butcher. Thomas Castro was the name he was known by. He was rather tall, with light brown hair (growing darker) and grey-blue eyes, and he was about 32 years of age. But he weighed sixteen stone!

Another curious point to be noted is that the half-crazy mother had understated the age of her son by four years. Roger Tichborne would have been thirty-six, not thirty-two, in 1865.

The man Thomas Castro had fallen on evil days. He could not meet his liabilities, and was being sued right and left. He, accordingly, applied to an attorney of Wagga-Wagga, named Gibbes, to put him through the Insolvent Court; or, rather, it should be said that Gibbes suggested this course. In the course of conversation, the client asked whether, if he were to become a bankrupt, he would be obliged to disclose property to which he was entitled, or in which he had an interest, in the south of England. Soon afterwards Castro said the property was in Hampshire. Why he selected Hampshire I do not know; except that he had a friend at Wagga-Wagga, named Slater, a Hampshire man, who loved to talk of the beauties of his native county and the magnificence of its gentry. Naturally, Slater talked a good deal of the Tichbornes in this connection.

Shortly after this conversation, Gibbes saw Cubitt's advertisement.

He then recollected Castro's question about the property in Hampshire. He also remembered that on one occasion his client had remarked that he preferred the South American climate to that of Australia. The attorney spoke to his wife, and she reminded him that Castro appeared to be about thirty-two, that he was rather tall, that his eyes were grey, but blue eyes often turned to grey, and that his hair had been a lighter brown formerly.

A day or two afterwards Castro called again on his attorney, who by this time had made up his mind to

probe the matter. Quite suddenly Gibbes said, "Shall I call you out loud by your real name? You have neither Christian nor surname your own." Castro was smoking a wooden pipe at the time. Thrusting it towards the lawyer, he inquired, "Are those the initials?" And there, carved on the underneath part of the bowl, were the letters "R. C. T." "Have you had that ever since?" said Gibbes. "No," replied the client; "I only cut them about twelve months ago."

Gibbes promptly wrote off to Cubitt, whom he knew: "Please let me know if you are in possession of any further facts respecting R. C. Tichborne than those mentioned in the advertisement" (here I beg the reader to note)—"first, as to the peculiarity of his delicacy of health; secondly, as to the cause of his leaving home; thirdly, as to the nature of his education."

The attorney had observed that the claimant (as I shall call Castro for the future) had a twitching of the eyelids, caused by St. Vitus's dance, and that his education was deficient.

The letter went on, "I think I 'spotted him' some time ago, and could find him, I think, and, if I could, would urge him to disclose himself. He was hugely disgusted when he found I had detected him, and his real name has never passed between us."

All this was good news for the Missing Friends agent. The post between Sydney and Wagga-Wagga was kept busy, and Cubitt lost no time in letting the Dowager Lady Tichborne know that he was on the eve of an important discovery. She, poor woman, urged him to send Roger home to her at once; and told him there was a man in Sydney, a black man named Bogle, who had been in the family service as a valet, and who could help to identify the missing man.



The burden of the whole song was, "Send my son home." She also requested Cubitt to ask the man whom he had found to give her some token to show that he was really her son.

But the great obstacle to the claimant's leaving Australia was want of money. His wife, an illiterate woman whom he had not long married, was confined in March, 1866. At this time Gibbes seems to have been financing him a little, and the client wrote a letter that may be given as a good specimen of his style.

"DEAR SIR,—My reason for writing instead of seeing you persanly Is. I am rea ashamed of trubling you so offen. Your kindness to me. Will be remembered more than a Medal of Honor on my brest. What I wish to consult you about is this my being Idle is drawing remarks from many. And what to do I do not. I don't wish to leave the town before we recevee our letters from Mother which I hope will not belong first. But how to live in the meantime is what trubling me. I paid the Baker with part of the Cash you were so kind to lend me. I do not wish to impose on your good nature for more cash. But what I wish you would do is to speaks to one at the Storekeepers to let me have what necessaries I would require for the House. If you think you could do so with safety, I would rather it be Mr. Forsyth, if anywhere. I expect Mrs. Castro will be confined before Saturday. And beleave me, Sir, I am more like a Manick than a B. of B. K. to think that I should have a child born in such a hovel.

I Remain, Dear Sir, your

Truly,

ROGER CHARLES TICH  
BORNE."

(The "Tich" was at the end of the line, so as to leave no room for the rest of the signature.) Years after, the "B. of B. K." excited much merriment. The initials stood for "Baronet of the British Kingdom." But the use of such an extraordinary expression excited no suspicion in the mind of the back-bush attorney.

Under Gibbes's directions, he also wrote to Lady Tichborne, and a remarkable letter it was. Gibbes tried to persuade him to send a letter written by the lawyer, beginning "Dear Madam," but the claimant took the pen. "She will recognise my writing and my old style," he said. Thus he wrote:—

"Jan. 17, '66. Wagga-Wagga.

"My Dear Mother,—The delay which has taken place since my last letter, dated 22nd April, '54, Makes it very difficult to commence this letter. I deeply regret the trouble and anxiety I must have caused you by not writing before, But they are known to my attorney, and the more private details I will keep for your own ear. Of one thing rest assured, that although I have been in A humble condition of Life I have never let any Act disgrace you or my family. I have been a poor man and nothing worse. Mr. Gibbes suggests to me as essential that I should recall to your memory things which can only be known to you and me to convince you of my Identity. I don't think it needful my Dear Mother although I send them namely the Brown mark on my side and the Card Case at Brighton. I can assure you My dear Mother I have kept your promise ever since. In writing to me please enclose your letter to Mr. Gibbes to prevent unnecessary enquiry as I do not wish any person to know me in this Country when I take my proper position and title.

N.B. "Having therefore made up my mind to return and face the sea once more, I must request you to send me the means of doing so, and paying a few outstanding debts. I would return by the Overland Mail. The passage money and other expences would be over Two Hundred Pound, for I propose sailing from Victoria, not this colonly, and to sail from Melbourne in my own name. Now to annable me to do this My Dear Mother you must send me——" (The rest of the letter was lost before the trial.)

There are one or two points to be noted. (1) Roger Tichborne's last letter home could not have been April 22nd, 1854, because the *Bella* sailed on April 20th, 1854. (2) Roger Tichborne never had a brown mark on his side. (3) Roger Tichborne had never been mixed up in the Brighton Card Case, which was a case where two pugilists, Johnny and Henry Broome, persuaded a young man named Hamp to play cards with them, and cheated him out of £1,500.

Now the Dowager Lady Tichborne did not notice the mistake in date, but she did notice the other blunders; and pointed out that Roger never had any brown mark that she knew of, nor did she recollect anything of a Brighton card case. But the crazy old woman meant to find her son; and, as one of the witnesses afterwards put it, "If they had sent over an Egyptian mummy, she would have identified it all the same." Moreover, her other son, Sir Alfred, had died, leaving two infant children and a young widow, and on his death his affairs were found to be greatly embarrassed.

So she wrote to her "Dearly beloved Roger" in Wagga-Wagga; and that worthy young man replied in a singular epistle in which he states, "But it matters

not Has have no wish to leave a country ware I injoy good health. I have grow very stout," and concludes with the curious benediction, "May the Blessid Maria have mercy on your soul!"

All Catholics will agree that this was a most impossible prayer for a lifelong, educated Catholic. Leaving out the "Blessid Maria" (a Catholic would naturally write, "the Blessed Virgin") the prayer for mercy on the soul of a living person is absurd. To pray for the souls of the departed is Catholic; to pray for "mercy on the soul" of a live person is rubbish.

And "Maria" is neither English nor French. The one is "Mary," the other "Marie." I believe the Spanish is "Maria;" and the reader will see that the word is one that would come naturally to the tongue of one who had only known Catholic ritual in a Spanish-speaking country.

Gibbes, Cubitt, and the claimant were all writing clamorously for money, but the Dowager was in no mind to send any at the time; and at last the "B. of B. K." managed to raise a considerable sum from a banker in Sydney. At much the same time Lady Tichborne sent £400.

Meanwhile, the claimant had been recognised as Sir Roger by two persons—one was Bogle, a black man, who had been valet to Sir Edward Doughty for about forty years. Lady Tichborne had written to Cubitt to say that Bogle was in Sydney, and that he was an old servant. Bogle heard from Lady Doughty that a person in Sydney was calling himself Sir Roger Tichborne, and he accordingly went to the Metropolitan Hotel and inquired if Mr. Roger Tichborne was there. On being informed that Mr. Roger Tichborne was out, Bogle waited about in the hotel yard. The claimant

came into the hotel and passed Bogle without any recognition on either side. Then he came out, looked hard at the negro, and said "Hello, Bogle! Is that you?" The black replied, "Yes, sir, it is. How do you do?" and then, "How stout you've grown." For Bogle had known Roger Tichborne right up to the time of his leaving England for South America. The ex-valet might have added, "And how tall!" since the big man in the hotel yard was nearly a couple of inches taller than the young man who left England in 1853. The old servant was, apparently, not quite convinced. He asked to see Mr. Roger Tichborne in his room; and was accordingly shown up. What took place there can never be certainly known; save that at the end of the interview Bogle was engaged to accompany the claimant to England, and that afterwards he went off to another old Tichborne servant, named Guilfoyle, then living in Sydney, and told him that "it was the man."

One rather curious blunder the claimant made. He asked "How is your wife?" Now when Roger Tichborne was in the habit of visiting Tichborne House, Bogle was a widower with two children; but he had afterwards married again, and his wife lived with him at Sydney. The black seems not to have noticed this. At any rate, from that time forth he always asserted the claimant to be Sir Roger; whether honestly or not is another matter.

With the £400 sent by the demented woman, whose folly gave occasion for the imposture, the B. of B. K. finally sailed in 1866 for England. But before doing so, in fact before leaving Wagga-Wagga, he had made a will. Be it known that Lady Tichborne had signed her initials only in her letters to Australia. The testator left "to my mother Lady Hannah Frances Tich-

borne the whole of my property in the Isle of Wight," a rather remarkable devise when it is considered that the Tichbornes owned no property in that island. The same observation would apply to a gift of "the Hermitage estate." The executors were John Jarvis, Esq., and Henry Angel, Esq., both of Bridport, in Dorset.

The claimant arrived in England two stone heavier than when he set out from Sydney. Rumour had preceded him; and already it was talked about in Hampshire that young Roger Tichborne had been found in Australia following the occupation of a butcher. The Dowager Lady Tichborne was in Paris at this time, and she entreated her beloved Roger to come over at once. But Roger was in no hurry. He first paid a visit, travelling incognito, to Tichborne Park. He made the acquaintance of a brewer's traveller, who introduced him to a solicitor, Mr. John Holmes. And finally he went over with Holmes to Paris. Even then he seemed reluctant to call on his mother; and at last the poor lady made up her mind to go to him. Accordingly, she drove to his hotel, and was there received by the solicitor. She proceeded to the claimant's bedroom. Never was there, surely, such a meeting between a fond mother and a long-lost son. The latter was lying on a bed, half drunk and wholly frightened. So that he should be the more easily recognisable, he turned his face to the wall. Lady Tichborne walked over to the bed, looked once at the huge mass of flesh lying there, and said, "This is my son." Holmes at once called in a servant and said to him, "You are a witness that she recognises him," and the old lady assented. The faithful Bogle was also there to assist at this joyful meeting. But, strangest of strange circumstances, the long-lost

son said not one single word to the mother who had so anxiously expected his coming.

Upon this recognition by the Dowager Lady Tichborne rested the whole of the case subsequently raised by the claimant to the Tichborne title and estates. Upon it was founded the whole of the popular agitation which subsequently shook Great Britain from end to end. People of little education and limited view were content to say, "His mother recognised him at once! How could a mother be mistaken as to the identity of her son?"

Yet Lady Tichborne, mad as she undoubtedly was, must have been more than a little surprised at the change wrought in her eldest born by his life in Australia. Quite apart from the change in his personal appearance by reason of increased weight, there was nothing left of the smart young cavalry officer who sailed from Havre. Indeed, he had forgotten that he had ever been an officer at all: his recollection was that he had enlisted in the ranks, and had been bought out at the end of fifteen days. His English had become vulgarised to a remarkable extent; for he omitted the aspirate in many places, and tried to amend the deficiency by a liberal application in places where the aspirate is not used. "'Oly horders," was one example. To make matters worse, he could not converse with his mother in their native tongue; for he had forgotten every word of French, and could neither speak nor understand it.

Having recognised him herself, the fond mother sent M. Chatillon, who had been Roger's tutor in Paris. When he arrived, the Frenchman was asked to "shake hands with your old pupil." Chatillon was too polite not to offer his hand; but he said, without hesitation, "Madame, this is not your son"—much to Lady Tichborne's grief.

For several days the claimant, the solicitor, and the faithful black remained in Paris. Long conversations took place between them. The mother was able to tell her son of many things he had completely forgotten. She turned out for his perusal all the letters from Stonyhurst, from Tichborne Park, and from Ireland. She showed him every scrap of paper relating to the family history and estates.

When he left, he ran over to England, and was not long before he went down to Alresford. Here he met Mr. Rous, mine host of the "Swan," whom he speedily convinced of his identity with the long-lost heir. Rous sent for Mr. Hopkins, an old solicitor, who had acted for the Tichbornes, even for Roger himself; and Hopkins sent for Baigent, a Winchester archæologist, the historian of the Tichborne family; and they two, also, were converted to the same view.

The adhesion of Hopkins had enormous weight in Hampshire. That gentleman was greatly trusted: and when it was known that not only the Dowager Lady Tichborne, but Hopkins also (not to speak of Baigent and Rous) had recognised the stout butcher of Wagga-Wagga as the rightful Tichborne, belief in the claimant became a cult. Very soon Mr. Guilford Onslow, a local M.P., Colonel Lushington, Mr. Bulpett, a Winchester banker, and several of the local gentry came over to the camp. As for the common people, they everywhere recognised "Sir Roger."

Fortified by these accessions of strength, Mr. Holmes, who accompanied his client everywhere, suggested meetings with various members of the family. The latter very readily assented; but the claimant was so frequently ill when the meetings should have taken place, that they did not occur so soon as Holmes



desired. When they did happen, the relatives steadfastly refused to acknowledge their long-lost relation.

Almost simultaneously, Holmes opened two campaigns—one in the newspapers, and one in Chancery. The Chancery suit was brought to establish the rights of the B. of B. K. to the Tichborne estates, and the defendants were the trustees who held those estates for the infant son of the late Sir Alfred. To Holmes's surprise, the trustees did not admit his client's rights; and so, in 1866, commenced that tremendous litigation which lasted for close on seven years; and was fought out with horse, foot, and artillery; only ending in a sentence of penal servitude.

Nothing like it had ever been seen since the great Douglas Cause. As the litigation progressed, in the full glare of publicity, great parties began to be formed. The whole country seemed divided into those who believed in "Sir Roger," and those who said he was a rank impostor. Large sums of money were raised by public subscription, and by loan, to support the claimant's case; and the amount expended by the defendants was ruinous.

Baigent, Rous, and Bulpett, the banker, not to say Holmes, exerted themselves to procure evidence for their man; and in this connection occurred one of the most discreditable and impudent frauds in this discreditable and impudent case. Bulpett was well acquainted with Mr. Vincent Gosford, with whom Roger Tichborne had been very intimate, whom he had made one of his executors, and with whom he corresponded from South America. The banker arranged for the claimant to dine with him, and invited Gosford to meet him. Gosford could not very well refuse; for he owed the banker a considerable sum of money. During the meal and after

it Gosford was invited to put questions to the claimant, by way of testing him. One of the questions he put was as to the contents of a certain brown paper parcel left in his hands by Roger. The claimant said he had no recollection of it. Gosford tried to assist him a little by saying that it contained certain directions or something of the kind relating to Miss Kate Doughty. Still the claimant could not remember. Here Bulpett interposed, "I should like to see that paper," or words to that effect. Upon this Gosford admitted that the paper had been destroyed by him. At the same time he said that he had read it and remembered it perfectly; and that he was sure that Roger Tichborne would remember it too; and he intimated to the banker as gently as he could that his guest could not, in his opinion, be Sir Roger Tichborne.

Will it be believed that after this the claimant asserted and swore in affidavits that Gosford had recognised him?—an assertion which had considerable weight at the time because everybody knew how intimate Gosford had been with young Roger.

The Chancery proceedings ran merrily on. For the information of the lay reader, let it be said that the method of taking evidence in the Chancery Court of that day was for each witness to give a statement to the solicitor; then for the solicitor to have this manufactured into an affidavit by counsel, and for the witness to sign the affidavit. When affidavits in chief, in answer, and in reply had been filed, notice could be given to cross-examine the witnesses on their affidavits. This cross-examination did not take place in open Court before the judge, but in a room before a barrister whose sole duty it was to take down the cross-examination. Then the affidavits and the note of the cross-examina-

tion were all laid before the judge who tried the case. A better way of concealing the truth has never yet been invented. To add to the humour of all this, the Chancery barristers of those days were ludicrously feeble cross-examiners.

By this time, the Tichborne family had retained the services of Mr. Henry Hawkins, Q.C., the most powerful cross-examiner of his time, and perhaps of any other time. When the day arrived upon which the claimant was to be cross-examined on his affidavits, Hawkins was invited to attend, not for the purpose of smashing the claimant to pieces, but of listening to a cross-examination conducted by Mr. Chapman Barber, a Chancery junior of great industry and learning, and of equally little ability in the handling of witnesses.

It must have been worth a considerable sum of money to watch the countenance of Henry Hawkins as the learned Equity junior laboriously built up the claimant's case for him. For, as Hawkins afterwards said, it was not Chapman Barber who cross-examined the claimant, but the claimant who cross-examined Chapman Barber. Certain it is, that by the time the performance was concluded, the knowledge of the claimant as to the Tichborne family, the Tichborne estates, and the life of young Roger had improved immensely.

But fortunately for the defendants, the case was not to be decided in the realms of Chancery, nor upon the cross-examination of their industrious junior.

The Dowager Lady Tichborne died about eighteen months after the Paris recognition; and the claimant was advised to begin an action in the Common Pleas. This was the celebrated action of *Tichborne v. Lushington*. The nominal defendant was Colonel Lushington, tenant of Tichborne Park; but the real defendant

was the infant son of the late Sir Alfred, who was represented by his guardians.

The question in the action was whether the plaintiff was entitled to the Tichborne estates; that is, whether he was Sir Roger Tichborne.

As might be expected, the Tichborne family had not been idle. They had ascertained that early on his arrival in London in 1866, the claimant had gone down to Wapping in the East-end of London, and made inquiries as to the relatives of a certain Arthur Orton. Arthur was the son of George Orton, deceased, a butcher of Wapping, who had a large family of sons and daughters, some of whom were nicknamed "bullocky" Ortons because of their big, clumsy appearance. Further inquiry revealed that Arthur Orton had last been heard of in Australia; and that a friend of his, a Mr. Thomas Castro, had written to Wapping from Wagga-Wagga, asking after the Orton family. As the inquiry was pursued, it was found that Arthur Orton was very big and fleshy; that he would be, in 1866, thirty-two years of age; that he was a butcher; that he had been sent to sea because he had St. Vitus's Dance; that he had deserted the ship at a port in South America, and that there he had been hospitably entreated by a man of the country named Thomas Castro; that he had left for Australia, had lived at Hobart, and had been accused there of horse-stealing. A Miss Mary Loder was unearthed who had been the sweetheart of Orton in Wapping. She had, fortunately, preserved some letters written by Arthur at various times.

Curiously enough, the claimant admitted that he knew Castro of Chili; and, as we know, when found at Wagga-Wagga, the name Thomas Castro was painted over his shop. Of course, it was just possible that

Roger Tichborne had also met Castro in Chili. So a commission was appointed to take evidence in that country; and the claimant undertook to present himself there for identification. He did not present himself.

Another commission was sent to Australia to take evidence; and, amongst other testimony, gathered that of a gentleman who had known Arthur Orton at Hobart, and also Thomas Castro, of Wagga-Wagga. And he declared them to be one and the same person.

From that time the Tichborne family ran their case on the line that the claimant was not only not Roger Tichborne, but that he was Arthur Orton.

There is no need to complicate this narrative by detailing how the claimant sought out some scores of ancient troopers of the Carabineers, and induced them to believe, or at any rate to say, that he was their former officer; how the press was flooded with rumour and cross-rumour, with assertion and counter-assertion; how, on Lady Tichborne's death, the Tichborne family managed to lay hold of all her papers; how one of the Ortons betrayed into the hands of the defendants certain letters written by the claimant; how Mr. Rous also quarrelled with the claimant and handed over many valuable letters; how old Mr. Hopkins died; how Holmes, the attorney, threw up the case; how the plaintiff became bankrupt; how he raised large sums for the litigation by public subscription, and by the sale of "Tichborne Bonds;" how he increased in bulk until he weighed twenty-five stone; and "fat as Sir Roger" became a proverb.

At length the preliminaries were over, and in 1871 (May 11), amidst the most intense public excitement, Chief Justice Bovill and a special jury sat in Westminster Hall to try the right of the claimant to the title and estates of the great Tichborne family.

Serjeant Ballantine had been retained to lead for the plaintiff, assisted by Mr. Hardinge Giffard, Q.C., Mr. Pollard, and Mr. Rose. On the other side, Hawkins had been retained as leader, with John Coleridge, K.C., Sir George Honeyman, Chapman Barber, J. C. Mathew, and Bowen ; but before the trial came on, Coleridge had become Solicitor-General, and, as such, entitled to lead everybody (except the Attorney-General, who was not in the case). Hawkins hardly attempted to conceal his disgust. To begin with, he was not accustomed to be led by anybody. Moreover, he had long been looking forward to the day when he should crush and pulverise the impostor with his unrivalled power of cross-examination.

Ballantine opened quietly. He was not an orator, like Coleridge, nor a fierce smasher-up of witnesses, like Hawkins ; but he was the wiliest advocate of his time. He made a comparatively short speech, laying stress on the recognition of the plaintiff by his mother, Rous, Baigent, the old Carabineers, the country folk of Hampshire ; and, in fact, by everybody, almost, who had not some interest not to recognise him. He pointed out the foreign training, the imperfect education of Roger ; and, in fact, made a most judicious opening.

But the best thing done on that side was the examination-in-chief of the claimant by Giffard. "Masterly" is the only word for it. The claimant was led along smoothly and quietly to tell of incidents in Roger's childhood, a little about Stonyhurst, and the courtship of Cousin Kate, and the departure on a tour round the world. By this time the claimant was able to "remember" the Gosford brown-paper parcel. It contained a letter, he said, directing Gosford to take care of Miss Doughty if she became *enceinte* ; as he, Roger, had

seduced his cousin. This the plaintiff brought out only on being challenged by Coleridge, and with a great show of reluctance. The wreck, the picking up by the *Osprey*, the life in Australia, the discovery, and so on, were lightly dealt with. More stress was laid on the recognition by the mother, and the subsequent identification by Baigent, Bulpett, and others.

Then Coleridge rose for a sixteen days' cross-examination. He was not successful in smashing the witness up. I doubt very much if Hawkins could have done it, as he boasted; though Hawkins, a man of less delicate fibre than the Solicitor-General, might have made a little more impression on a man of the claimant's calibre.

As it was, *pace* the opinion of Sir Alexander Cockburn that Coleridge had the worst of it, the cross-examination was enough to convince any reasonable being that the man in the box was an unmitigated liar, a rogue, and an impostor.

He could not tell his brother Alfred's pet name. He had forgotten all his French. He could not tell who was the person who taught him in Paris.

The Stonyhurst part of the cross-examination was very amusing. What had he been taught there? Latin, Greek, and Hebrew. Could he say the Greek or Hebrew alphabet? No, he could not. Had he learnt them? Yes, he had; but he had forgotten them. Had he learnt the Latin alphabet? Falling into the trap, the claimant said, "Yes!" A Virgil being put into his hand, he said he thought it was Greek. The letters A. M. D. G., familiar to every Jesuit, and every pupil of a Jesuit, and the letters L. D. S., equally familiar, he declared he had never seen, or, at any rate, did not remember. By way of helping him, Coleridge asked,

"Will it assist you if I tell you that L. D. S. stands for *Laus Deo Semper*? What does that mean?" "The laws of God for ever!" answered the claimant; and the Court rocked with laughter. A quadrangle was "a part of a building." What part? A staircase! And again the Court shook. "Seminary? Do you mean *cemetery*?" he inquired. He had forgotten bandy, *the game of Stonyhurst*. And so on, *ad infinitum*.

When it came to his military career, he was just as funny. His most comical guess was when he was asked the functions of an orderly. "To see that the stables are kept tidy, and that sort of thing," said he.

Why had he made the mistakes in the Wagga-Wagga will—"Hannah Frances," instead of "Henriette Félicité?" (he pronounced it "Feliceet"). Oh! that was to deceive Gibbes. He didn't want Gibbes to know his affairs too well! John Jarvis and Angel, of Bridport, were suggested to him by Arthur Orton; they were friends of Arthur's.

Why had he asked the Wagga-Wagga schoolmaster to write to a Mr. Richardson, of 72, High Street, Wapping, inquiring after old George Orton and his family? Because he wanted to know if his friend Arthur was alive; he hadn't heard of him for some time then.

Did he go to Wapping on December 25th, 1866, the day he landed in England? Yes. Why? Because he wanted to see if Arthur Orton had arrived in England before him.

Was this letter in his writing, addressed to Orton's sister:—"Dear Madam,—I received your kind letter, and very sorry to think you should be so mistaken to think i am your brother. Your brother is a very great friend of mine, and one whom I regard has a brother,



and I have promised to let him have all information about his family"?

Yes, he admitted he wrote it.

Why did he sign it W. H. Stephens? He did not know. He could not produce the letter to which this was an answer.

"'Promised to let him have all information'—how so, if you expected to meet him at Wapping, and went down to see if he was there?" No answer.

Another "W. H. Stephens" letter, also acknowledged by the claimant, asking for information "concerning a Miss Ioder." Couldn't explain this, either.

But the completest part of the cross-examination was as to the Gosford brown-paper parcel. Witness gave the version above quoted. He swore he had seduced Kate Doughty, and that was why he left England. If what he said as to the letter was not true, why didn't Gosford produce it?

The Solicitor-General put into the witness's hand a piece of paper, old, faded. "Do you recognise this?" "It appears to be my writing." And then it appeared that Roger Tichborne had written the letter in duplicate. One copy he had put in the brown-paper parcel and given to Gosford. This had been destroyed. The other he had given to Kate Doughty (now Mrs. Radcliffe). And that had not been destroyed. It had been preserved all those years. And it contained no reference to seduction or anything of the kind; but was a solemn vow by the young man that if he should be spared, and should marry his cousin Kate within three years, he would build a chapel to the Virgin.

Sir John also made a considerable impression by putting to the claimant various letters, some written by Sir Roger before his voyage, some written by the claimant

Perhaps the most effective contrast between the styles of correspondence of Roger Tichborne and the claimant is to be found in two letters written to Roger's cousin, Mrs. Greenwood. The first is dated 1852, the second 1867. Look on this picture:—

“MY DEAR COUSIN,—I shall not, I am sorry to say, be able to go and spend a day or two at Brookwood, as you had the kindness to invite me the last time I had the pleasure of seeing you. I shall be obliged to go to Paris at the beginning of next week, where I shall remain, in all probability, about a week or ten days before I embark for South America. My time is, in consequence, so much taken up with one thing and another that it will be, I regret to say, impossible for me to leave Upton this week. I should feel much obliged if when you have a moment to spare you favoured me with a letter. Though I shall be far away, it will always give me much pleasure during my wanderings in South America to hear from you or Colonel Greenwood. I certainly will answer your letters (though you must excuse my bad handwriting) and give you an account, if you feel any interest in what kind of sport I get at the top of the Andes and in the middle of the forests of South America. Pray remember me very kindly to Colonel Greenwood, and believe me, my dear cousin, your affectionate cousin,

“6th December, 1852.

R. C. TICHBORNE.”

Here you have a letter written by a young man who expresses himself in educated, though rather stilted language. The English is stiff, but correct. The grammar and orthography are surprisingly good, considering the writer's short English education.

Now look on this picture:—

3rd February, 1867.

"MY DEAR COUSING KATE,—I am very sorry i am not able to come and see you before I go, my head is so bad i am not fit to come. Mr. Baigent is very much annoyed about it, but i am coming to spend a fue days at the end of the week, and i shall then have the pleasure of meeting you again you will excuse me for not coming has it will only be a fue days before am with you. I have an invitation from Mr. Hopkins to spend a fue day with him, so i shall be down about Thursday. Give my regard to cousing William and G. I shall soon be down again and have the pleasure of a hunt with my old friend george. With my best regards, my dear Cousin to you and your family, I remain your affectionate Cousin R. C. TICHBORNE.

"I have to meet Mamma to-morrow at dover, and our address will be Essex lodge, thornton heath."

Can it be believed that after this anybody could be found to have any doubt that the claimant could not be Sir Roger? He might forget his Latin and his Greek. He might forget the name of his own mother. He might forget the identity of his schoolfellows, and every detail of his school-days. He might even forget the language he spoke for the first sixteen years of his life. But no educated man can believe that he would forget that "I" was written "I," and not "i"; and that "cousin" was not spelled with a "g." Moreover, it would have been impossible for a man brought up as Roger Tichborne had been, to write "thornton heath" and "dover" without capitals. The letter was one of an illiterate, who has been brought up amongst illiterates; and, what is more, of a person of a low class. However badly he may spell, however ungracefully he

may express himself, a gentleman brought up amongst gentlefolk cannot express himself like a butcher of Wapping; though a butcher of Wapping may learn to express himself like a gentleman.

But the jury did not stop the case. They wished to hear the claimant's witnesses out.

John Moore, the servant who accompanied Roger Tichborne, was produced. He travelled as far as South America, and was then sent home for reasons of health. Naturally, when he appeared in the box and stated his belief that the claimant was his old master, his statement had some weight. But cross-examination left him high and dry. Coleridge put it to him that he had stated to one Pitts, a butler, formerly in the Dowager Lady Tichborne's service, "He is no more Roger Tichborne than I am, or you." Witness admitted this.

Q.: "Did not Pitts say, 'But Lady Tichborne has acknowledged him,' and did not you reply, 'If they had sent over an Egyptian mummy and labelled it "Roger Tichborne" she would have acknowledged it as her son?'"

A.: "I beg her ladyship's pardon if I said that. It is very possible I might have said so."

Q.: "Did you tell a Mr. Walmsley that the plaintiff was a rank impostor?"

A.: "I might have done; but if so, that was previous to his examination at the Law Institution."

The "Egyptian mummy" speech cast a lurid light on the witness's real opinion of the claimant, and also on the state of mind of the Dowager Lady Tichborne as revealed to the people surrounding her. In fact, it did a great deal to discount the value of the plaintiff's strongest point.

The evidence of the claimant's local witnesses—*i.e.*

those from Hampshire—was amusing. The positiveness and dogged assertions that “that gentleman there” was Sir Roger Tichborne, was only equalled by the way they tumbled to pieces when cross-examined. The kind of thing was this:—“He came to Alresford and was in the ‘Swan’ Yard when I went up and saw him. I said ‘How do you do, Sir Roger?’ He shook hands. Then I said ‘Don’t you remember me selling you that brown horse?’ (or) ‘Don’t you remember the day you called at my house when you came home from hunting?’ And he said, ‘Of course I do.’ I was sure, then, that he was Sir Roger.”

But when it came to Mr. Baigent, the man who had supported the claimant through thick and thin, with the exception of one short tiff, the evidence had to be carefully sifted. Baigent described himself as an archæologist, living at Winchester, and a lifelong friend of the Tichborne family. Especially had he been intimately acquainted with Sir James and the late Dowager Lady Tichborne. Roger he had known since he was seventeen years old. “From 1846 I suppose I was fifty or sixty times in his company, sometimes for two or three hours. His principal pursuit was smoking. As a young man, Roger,” proceeded the witness, “sought the society of his inferiors, because they would not laugh at his ignorance of English usages. I have assisted the claimant since his return to this country in every way in my power.” “From any retainer or hope of payment?” “I have done so from a sense of justice, and to assist an oppressed and ill-used man.” The first time he saw “Sir Roger” was the 31st of December, 1866, at Alresford. He came out of the back garden. Mr. Hopkins was present, and he said, “Look, that’s Sir Roger.” The claimant looked hard at them

both. Hopkins said, "Depend upon it, he knows us both!" "I could not recognise him then, as he had on a peaked cap and a handkerchief covering the lower part of his face. Before I saw him again, I was aware that his mother had recognised him. On the 2nd of February, 1867, I was shown by Mr. Holmes a large photograph of the claimant. The nose had altered, apparently through a blow; but I took a piece of paper and covered over the mouth. I then said: 'There he is, just as he used to be fourteen years ago.'"

After this, all was plain sailing. To resume the narrative, giving only the relevant parts:—"I afterwards went to the Swan, and into a room in which I saw him. I went up to him and said, 'I never expected to see you again.' He then put on a smile which I remember of old, and said, 'I am very pleased to see you.' He looked at me, placed his hands on my shoulders and said, 'Why, when I went away I was no stouter than you.' . . . I identified him from the very first. His voice went through me. The effect on me was electrical. . . . He had considerably improved in his English before leaving. The object of his life was to forget his French and become an Englishman. . . . I have since noticed his hands. He has the same weak hands as Roger Tichborne had. He has not a good grip of anything. We then had a conversation—Hopkins, Sir Roger and myself. Hopkins said, 'Do you remember the first time you were in my house?' He looked up with a melancholy smile, 'I do; papa and mamma did not always agree.' The claimant had also recollected that he used to lunch with Hopkins frequently at the 'Swan,' that he had been very unpunctual in answering Hopkins's letters, and

that he had once sent Hopkins a bundle of saddle-cloths in mistake for a bundle of papers."

(The truth of this incident was vouched by a contemporary letter from Roger Tichborne.)

"Half-an-hour afterwards," Baigent proceeded, "I took up a letter from a side table. It had been covered up there for the purpose. *The moment he caught sight of the heading* he said, 'Why that is one of my old letters. I wrote it at Mr. Seymour's.' Another letter folded over so that he could not see the signature or the heading, he recognised at once as his father's."

Many other questions the witness related as having been put to the claimant, such as "How the money to buy his commission was raised?" "What time he went to Stonyhurst?" Witness concluded his evidence by a warm assertion that he had never given the claimant information to enable him to give evidence. "Being Sir Roger Tichborne, he did not require it."

A week-end intervened between the examination-in-chief and the cross-examination of Mr. Baigent; and when the Court met on the Monday morning, Mr. Henry Hawkins rose to try his hand, for the first time in the case, on an important witness. The cross-examination was the most effective yet administered. As his manner was, the great cross-examiner began by a serious attack on the witness's credit. The first question was:

"What is your real position with regard to this affair? Are you assisting the plaintiff professionally or as a friend?"

A.: "As a friend, and a friend only."

"Not professionally at all?"

A.: "What do you mean by 'professionally?' I am not an attorney, nor an attorney's clerk. My pro-

fession is that of a writer and antiquarian. I am not acting for him professionally in that way."

But Hawkins was not to be put off. In his silkiest tone he inquired: "Then are you acting for him professionally in *any* way?"

A.: "Not if I understand the meaning of that word."

Q.: "Are you paying your own expenses in London, or are they paid for you?"

A.: "Partly by myself and partly by the firm."

Q.: "What firm?"

A.: "Baxter, Rose and Norton" (claimant's solicitors).

Then he was pressed as to his means. He lived entirely on his own exertions. He was forty-two years old. For a long time he had been writing a history of the Tichborne family, but denied that he had had access to the private papers of the family. His "friendship" with the Tichborne family was somewhat whittled down. Sir Edward Doughty he knew because he had done work for him—copying seals, family monuments, and the like. Ever dine at his table? Well—no. Ever have a meal in his house? Yes. Where? Witness was a little coy at first, and then admitted it was in the housekeeper's room. With Sir James all relations had been broken off. Very slowly the reason came out. Mr. Baigent, in 1858, had married Miss Plowden, a connection of the Tichborne's, a lady with £300 a year of her own. Mr. Baigent was then about twenty. The lady of his choice was well over fifty. They were married at the Registrar's Office, Farnham, and parted the same day. He had never lived with her. He had received a communication from a solicitor at Bath, where his wife lived, and had settled the £300 a year on her. Though he had married a member of the family, he had



never been admitted to the house of a single one of the Tichbornes.

Two letters, written to a Mr. Scott Murray, were produced. These had been penned after the claimant was "discovered," but before witness had seen him. Alluding to the report that Roger Tichborne had been found, Baigent had written, "Such reports have been rife in this neighbourhood for the last three or four years . . . therefore the appearance of anyone upon the scene representing himself as the veritable Roger Tichborne would not surprise me in the least; and as far as the poor ——— mother is concerned, I have long wondered that such a person has not turned up long before now"—a curious commentary on the poor mother's state of mind.

The blank between "poor" and "mother" had originally been "flighty" or "foolish"; but Baigent, after he took up the claimant's cause, obtained possession of the letter again and scratched the word out. To the same correspondent, on the same subject, he wrote in October, 1866, "There is something so very droll, this story of the discovery of Roger Tichborne, as to make it laughable, not to say ridiculous. . . . I shall be glad to hear anything that turns up about the butcher."

One or two characteristic Hawkinsian passages occurred. "I don't know what you are driving at," said the witness. "I do not intend you to know," replied Hawkins. "It is enough for you to answer the questions." Another time the Chief Justice asked, "Do you mean to say you do not know the meaning of the question?" ("Are you acquainted with Roger Tichborne's handwriting?" was the question.) Baigent replied, "Not in the sense in which it is used by my

learned friend." *Hawkins*: "Please don't call me your learned friend. I am not; and hope I never shall be."

The evidence as to Roger being fond of his inferiors' society, given, obviously, with the intention of explaining away the claimant's dreadful manners and mode of speech, was reduced to this, that Baigent had seen him once or twice having a drink in the butler's pantry, and more often talking to Bogle and other servants.

The task of cross-examining the Winchester archæologist was not made any easier by the circumstances that Mr. Baigent was very deaf, very pugnacious, and a hot partisan. The sort of thing that went on was this:—

*Hawkins*: "Didn't it strike you as odd——"

*Witness*: "No; it did not strike me as odd."

*Hawkins*: "Wait till you hear the question. Did it strike you——"

*Witness*: (at the top of his voice): "Do not bully, if you please. We are not in an Old Bailey Court. (Still louder) Pray do not bully me, Mr. Hawkins."

Here the judge had to interpose, and tell the witness not to be offensive to counsel; and matters proceeded quietly for a time. But before long the witness was up in arms again. "A most ridiculous question!" he ejaculated, and then there was another "scene." Nor did Hawkins, on his part, fail to irritate his victim at every turn. Said Baigent, "As we grow in age, we get more like our parents—more like them in colour; we resemble them more in our walk; and so forth." "Is that," sneered Hawkins, "an extract from an address to the archæologists of Winchester?"

On the subject of Roger's "weak hands," counsel had considerably the best of it.

"Did you say it was a weak hand?" "Yes."

"Was it such a weak hand that he could wield a pole-axe and knock a bullock down?" "I cannot answer that."

"Was it such a hand as would enable him to act as a slaughterman?" "Well, I don't know."

On the subject of the letters recognised by the claimant as his own and his father's, the witness was asked as to the first whether "Upper Grosvenor Street" was not perfectly visible when the letter was shown. He said it was. Did he think it possible that the Dowager Lady Tichborne had told the claimant all about that place, and how Roger used to stay there? Well, it had not occurred to him.

"Now," said Hawkins, "fold me up the letter of Sir James Tichborne precisely as it was shown to the plaintiff." This was done, and the letter handed down. "Why," exclaimed Hawkins, slightly opening one of the folds, "the very first words my eyes light upon are 'James Doughty Tichborne.'"

*Witness:* "But he did not see that. He never looked at it like that. It is enough to make one angry."

*Counsel:* "What is?" "To make insinuations against the character of another person."

"Of whom are you speaking?" "The gentleman to whom I showed that letter."

"You have as much confidence in him now as ever?" "Yes."

"And you believe him to be a truthful, honourable gentleman, notwithstanding all you have heard?" "I believe him to be a gentleman."

"A truthful, honourable gentleman?" "Well, the Scriptures say that every man is a liar." Presently: "I will swear I folded it so that the name could not be

seen." "Oh!" said Hawkins, "fold it again if you like, and swear to it again." "Don't be insolent, Mr. Hawkins."

Then the cross-examination went on to show that all the questions asked at the witness's first interview with the claimant might easily have been answered from information supplied by Bogle or Lady Tichborne, or even from the pages of "Burke."

The next point put was that Hopkins, who had made an affidavit in the plaintiff's favour in the Chancery proceedings, swore that "he could not recall the expression of his features." "Now," said Hawkins, "You knew him by his face?" "Yes."

"And Hopkins knew Roger Tichborne quite as well as you?" "Yes; but Mr. Hopkins could not remember faces. It was a peculiar defect of his."

This was a very clever answer; though, on reflection, one sees that even a man with a defective memory for faces would not be likely to forget the features and expression of one with whom he had had considerable business connection, and whom he had seen many times for hours together. More especially when the person came to him and said, "I am So-and-so." What is called "a bad memory for faces," generally means that he of whom it is predicated does not easily recall the identity of persons; given the face of one whom he has seen a long time ago, he cannot readily say, "That is So-and-so." So that Baigent's answer, though clever, was misleading.

With regard to the letter to "dear cousing Kate," where "cousin" was spelt twice correctly, and twice with a "g," the witness airily observed, "Just like Roger, to spell the same word correctly and incorrectly in the same letter!" Hawkins made excellent use of

the "Just like Roger!" He would read out a particularly ungrammatical or mis-spelt letter, and then ask, "Just like Roger?" "Didn't it occur to you as strange that he spelt his Uncle Seymour's name wrong?" "No." "Ah! Just like Roger!"

One very amusing bout was when Hawkins reminded the witness that before he (witness) had seen the claimant, the latter had been down to Alresford, and gone over to Tichborne Park, where, meeting an old man, he asked him "What place is this?" Hawkins ejaculated, "The lost heir comes back to his own house and asks, 'What place is this?'" Baigent promptly replied, "Oh, I should have done the same thing."

*Hawkins*: "If you had not known anything about it before, you probably would."

*Witness*: "Oh, I often play that kind of prank myself."

*Hawkins*: "You must be a very humorous fellow down at Winchester."

All this, of course, had an object—to put Baigent off his guard. And as soon as the object was attained the cross-examiner got home a deadly thrust.

It should be explained that Rous, who was one of the early supporters of the claimant, had fallen out with him, and had handed over all the letters he had to the other side. Now it appears that in a conversation with one Colonel Greenwood, the claimant had been trapped into saying something about hiding a coat (one of the small incidents of Roger Tichborne's boyhood) which never happened. On this subject Baigent had written to Rous: "I am sorry Sir Roger made the slip about hiding the coat, as Sir Roger said it was on an occasion of Colonel George walking to London, and he said it was not then. He must stick out that it refers to a

different time, and not the same as the Colonel refers to, if he dates it subsequently to Sir Roger's leaving England."

Hawkins pinned the witness to the phrase "stick out." Witness had previously talked about "truth and justice on our side." Hawkins rained questions on him: Was Sir Roger to "stick out" in the interests of truth and justice? Did witness think at the time Sir Roger ought to "stick out"? Did he think so still? Had he any explanation to give? In fact, the witness had a very hot quarter of an hour.

For eleven full days the cross-examination went on, until the witness declared, "I think the rack, the thumb-screw, and the 'scavenger's daughter' perfectly harmless compared with this." On the eleventh day, Hawkins persuaded the witness to say that some of the genuine "Arthur Orton" letters were very like the handwriting of the claimant. Mr. Baigent was also obliged to admit that both Orton and the claimant spelt "few" as "fue," that both Orton and the claimant used a small "i" for "I," and that the admitted Roger Tichborne letters, though their spelling was not faultless, did not contain any "howlers" of this kind. He also was confronted with a letter he had written to Rous, in which he said, "Mr. Kingston says if it [a letter from Arthur Orton] is not Sir R.'s writing, it is marvellously like it." The explanation given by the ingenious archæologist of the plaintiff's deterioration in letter-writing, in the use of the aspirate, and so on, between 1853 and 1866 was that a man knocking about in the bush for thirteen or fourteen years would naturally get backward in his learning, especially if not very well educated before. "If you lived among savages for thirteen or fourteen years, you would forget your law and everything." This

argument seems to have had great weight with many people. But they forgot that the premiss was false. Living at Wagga-Wagga and Hobart was not living among savages. Even when in the bush the plaintiff had always lived with white people—English men and women—a little rough, perhaps, but not people wholly illiterate, and certainly not savages.

Bogle, the negro servant, was another very important witness. He swore that the first time he saw the claimant he was struck by his likeness to Sir Henry Tichborne. They were "as like as two peas." He further swore that at their first interview the claimant mentioned to him a number of Tichborne people—that he asked after the health of Mrs. Martin, an old nurse, the two Guys, villagers; and said, "Do you remember going out shooting with Brand (a gamekeeper) and me?" Bogle also denied strenuously that he had ever given the claimant information for the purpose of setting up his claim; and as strenuously asserted that he was perfectly certain of "Sir Roger's" identity. Coleridge cross-examined for a whole day; but never shook the witness in the least, either as to his story or his credibility. In the subsequent trial, when Hawkins took him in hand, the man of colour had a much more startling experience; for then he was turned inside out, and completely discredited.

Bulpett, the banker, stated that he recognised the claimant after being introduced to him at the office of Holmes, the solicitor; but he had never seen young Roger except four or five times in the hunting-field. He had advanced over £500 to the claimant to help his case. Most important point of all, he was obliged to admit that he was present at the first interview with Mr. Vincent Gosford, when that gentleman asked the

claimant if he recollected leaving a packet with him before sailing for South America, and the claimant had to admit that he could not recollect the contents of the packet.

Scores of other witnesses came forward: old servants, farmers, residents in the neighbourhood, and particularly old soldiers of the Carabineers, who swore to the claimant's identity. Mr. Hawkins cross-examined most of the soldiers; and it became pretty apparent what had happened. The claimant had got hold of an old member of the regiment, and from him had picked up a lot of gossip about Tichborne's career as an officer—about the men and their nicknames, and so on. So that when he interviewed one of them, the impostor was able to answer questions. The scene would be something like this: Enter a man in civilian dress, but with straight shoulders and alert carriage, who gave a salute. *The claimant*: "I seem to recognise you. You—yes—you were in the Carabineers with me." *The visitor*: "My name is Davies." *Claimant*: "Ah! Yes! I remember. You are 'Alonzo.'" *The visitor*: "That's right, sir! Now I should like to ask you something. Do you remember anything about what happened one night in your bedroom?" *Claimant*: "I should think I do! You mean the time they put the young donkey into my bed? You helped me to carry it out, you remember!"

Now as the incident had really happened to young Roger Tichborne, the visitor was immediately convinced of the identity of the claimant with his old officer—never pausing to consider how easy it would be for an impostor to prime himself with such information of incidents known to every soldier in barracks.

But the most surprising witness for the claimant



was Miss Braine. This lady had been Miss Katherine Doughty's governess, and had seen a good deal of Roger Tichborne; and she swore in the most positive manner that the claimant was he. What made her evidence the more surprising was that no motive could be suggested why she should strain her conscience to support the case of a man who declared that he had seduced her pupil. She was a redoubtable witness, giving the most plausible explanations of the claimant's deterioration in matters educational and being much too clever for cross-examining counsel.

At last the claimant's case was closed; and the Solicitor-General rose to deliver the counterblast.

The most magnificent feature in the case was this speech of Sir John Coleridge. He opened strongly. "My duty is to show you—at all events to try to show you—that the estates and all the hopes of the Tichbornes centre in the little child who is my client; that the noble lady who is his mother and guardian has full right to the ancient title which she honours by bearing; and that she is not to be cast down from her dignity, and to see her child bereft of his inheritance by the cunning and audacious schemes of a conspirator, a perjurer, a forger, an impostor, and a villain." "I shall be able to lay before you hundreds of facts, each indisputable, each conclusive, each inconsistent with the story told by the plaintiff, each convicting him of a fraud, a lie, a crime on a scale of wickedness hitherto unexampled, as far as I know, in the annals of our Law Courts."

From this opening the orator proceeded, in that beautiful voice which gained him the title of "Silver-tongued Coleridge," to lay bare the story of the fraud. He showed how the butcher of Wagga-Wagga had

gained all his information : first, from Slater and from the crazy Dowager's letters, enough to accost Bogle and Guilfoyle : then from these two enough to make a good show of Tichborne knowledge to outsiders : afterwards from the poor demented lady whom he had called " Lady Hannah Frances " considerable knowledge of the family affairs : from the letters of Roger to his mother and father a quantity of further information. How he had, early on his return to England, been down to Tichborne, and gulled Hopkins, Rous and Baigent with the information previously obtained from Bogle and Lady Tichborne. How he had sought out the old soldiers of the Carabineers, and pumped them of regimental gossip. How, in fact, his knowledge of Roger Tichborne's life had accumulated like a rolling snowball.

Then the inconsistencies of the tale. How inconceivable that Roger Tichborne, with letters of credit in his possession for £2,000, should never present them, should never (though he knew that he was heir to vast wealth) write home for a penny of money after he landed in Australia. How inconceivable that a man who spoke correctly and wrote correctly in 1853, should in 1866 talk like an East-end cockney and write "cousing," "Holy Maria," "has" for "as," "Mr. Asham" for "Mr. Heysham," speak of a priest as "a gentleman in 'Oly Horders, and, in fact, commit every sort of blunder. Was not this just what you would expect from a butcher's son of Wapping? Were not the letters of the claimant exactly the same in style and spelling as those written by Arthur Orton to his sweetheart?

So he went through the claimant's case, demonstrating its falsity point by point, and showing how it had been made up. Stonyhurst, from the outside, the claimant could describe; but the inside of it he knew

nothing about. He could not tell the names of many of his schoolfellows. He had not been primed up in the numbers of them, and so made a ridiculous guess.

The one great fact upon which the plaintiff founded, and upon which he had obtained public support and public sympathy was the fact that "his mother recognised him." Coleridge showed from the evidence of Baigent and other witnesses what that recognition was worth. He quoted Baigent's letter (p. 320); and made great play with the ex-butler's "Egyptian mummy."

Then he set to work to prove that Thomas Castro was Arthur Orton. He showed how the claimant had instructed the Wagga-Wagga schoolmaster to write and ask after various members of the Orton family. Why? How did Roger Tichborne know Miss Loder, and Miss Loder's address? He read a letter signed "Arthur Orton," dated "Wagga-Wagga, 1865." He pointed out that the first visit of the claimant to any place in the old country was to Wapping, where he went in semi-disguise, and went—what for?—to inquire as to the whereabouts and well-being of the Orton family.

For fourteen days Coleridge maintained the high standard of his marvellous oration. His peroration was a fine example of forensic oratory: "The hopes of a great and ancient house are centred in the little child I have spoken of. For him, whom I most inadequately represent, I ask your verdict. I ask for no favour. I sue for no indulgence. I know you will do what you think right, because I have the most absolute faith in the honour, the justice, the integrity of a set of English gentlemen. English justice cannot, indeed, through you, wield the sword which is to smite down craft and crime; but English justice does commit to your hands those equal scales in which truth will always outweigh

falsehood. And, gentlemen—I trust in no foolish or braggart spirit, but yet in no unseemly but complete confidence—I accept the issue, for my cause is right, and you are just.”

It was the 21st of February (1872) ere the speech, which began on the 15th of January, was concluded; and after that the end soon came. The plaintiff had been asked by the Attorney-General, “Were you ever tattooed?” and had answered, “I never were.”

The defence took the line of calling, first of all, witnesses who could swear that Roger Tichborne was tattooed on the left arm in a most distinct and ineradicable manner. The first witness called was Lord Bellew, who swore that when he was at Stonyhurst with Roger Tichborne they spent one afternoon tattooing each other’s arms. Witness tattooed on Roger’s left arm the initials “R. C. T.,” and while doing it noticed that the arm was already marked with a heart and anchor. Afterwards, Roger tattooed an anchor on witness’s arm. Baring his arm to the elbow, Lord Bellew showed a very distinct anchor. Besides this evidence, Lord Bellew flatly contradicted the claimant on much of his evidence as to Stonyhurst.

Mr. Alfred Seymour, M.P., a maternal uncle, also swore to the tattooing—“a cross, anchor, and heart; and above them, a straggling, inartistic ‘R. C. T.’”

Mrs. Radcliffe it was, however, who settled the case. She was, as the reader will remember, that Katherine Doughty who had been young Roger’s lover and beloved. She denied, of course, the story of the seduction. Then she proceeded to give two or three pieces of evidence which could leave no manner of doubt in the mind of any sane person. These were:—

(1) The production of her original duplicate of the

paper left with and destroyed by Mr. Vincent Gosford. This turned out, as we have seen, to be a vow to erect a chapel to the Virgin if he should be married to his cousin within three years.

(2) The statement that when she and her cousin Mrs. Townley went to see the claimant, Mr. Radcliffe took in Mrs. Townley first, and that lady was greeted as "Katie" (not "Katty," Mrs. Radcliffe's old pet name) in mistake; while when Mrs. Radcliffe went in, he addressed her as "Lucy" (Mrs. Townley's name).

(3) The positive allegation that Roger Tichborne had on his arm in 1851 or 1852 a cross, anchor, and heart tattooed. Witness remembered this well, because he had tried to persuade her to have her arm tattooed also.

This evidence of the tattooing was corroborated by witness after witness who had known Roger, including Lady Doughty, and many persons entirely unconnected with the family, and, at last, after hearing about half-a-dozen of these, the foreman of the jury rose. He held in his hand a half-sheet of paper, and from it he read as follows:—"We have now heard the evidence regarding the tattoo marks, and, subject to your Lordship's directions, and to the hearing of any further evidence that the learned counsel may desire to place before us, I am authorised to state that the jury do not require further evidence."

Thus, on the 102nd day of the inquiry, this remarkable action was decided. Why the jury did not stop it at the end of the plaintiff's case, I have never been able to discover; for the cross-examination of the plaintiff himself could have left no doubt in their minds that the claim was an imposture, and a preposterous imposture at that. Probably the great public excitement made

the jury timid, and they waited to hear some conclusive evidence of identity before striking their blow.

Ballantine promptly asked for an adjournment, in order to consult with Giffard, who had left town for the Western Circuit, and an adjournment for two days was granted. When the Court re-assembled, the learned Serjeant asked if the tattoo marks evidence was the sole point upon which the jury had made up their minds. If it was, he had to complain of the way that point had been sprung upon the plaintiff's advisers. The jury answered that, in coming to their decision, they had considered the whole evidence. Ballantine then rose again, and in a few words consented to a non-suit.

Upon this, it would have been open for the claimant to begin another action, and raise the whole question again. But Chief Justice Bovill took a strong line. He ordered the claimant to be arrested forthwith; and intimated to the Government that he ought to be prosecuted for perjury.

The claimant was taken into custody the same day (March 6th, 1872), and carried to Newgate Gaol, whence he was speedily released on heavy bail.

Curiously enough, his adherents did not fall away to any appreciable extent. Mr. Baigent, the faithful Bogle—these perhaps were to be expected, but that Mr. Guilford Onslow, Mr. Biddulph, and other people of education and position should continue to countenance an imposture so manifest was very wonderful. The trial did not begin until more than a year after the claimant's arrest, to be precise, on the '22nd of April, 1873. The Treasury, in response to public pressure, bore the expense of the defendant's witnesses as well as those of the prosecution; and the intervening twelve months had

been spent by the claimant in going about the country, shooting for wagers at pigeon-shooting matches, and making speeches asserting his "rights." Counting heads, there can be little doubt that more than half England had decided in his favour.

The proceedings at the trial were wearisome in the extreme. Out of the mass of lies, the prosecution selected three, namely: (1) the statement by the claimant that he was Roger Tichborne; (2) the statement that he had seduced his cousin; and (3) the statement that he was not Arthur Orton.

Chief Justice Cockburn and Justices Mellor and Lush were the judges, and the trial was at Bar, before a special jury. Coleridge having declined to lead for the prosecution, that task had been assigned to the redoubtable Hawkins, who had the assistance of Sergeant Parry, Chapman Barber, J. C. Mathew, and Bowen. The defence was in the hands of Dr. Kenealy, Q.C., and Mr. Patrick McMahon, M.P.

Never was such a wearisome proceeding. Beginning on the 22nd of April, 1873, it did not terminate until the 28th of February, 1874, having occupied, in all, 188 days. The evidence was conclusive and overwhelming on all points. The claimant was proved, on his visit to Wapping (in 1866) to have asked in the most minute manner after all the Ortons; and to have been identified as an Orton. Half Wapping came up and identified the defendant as the son of the old butcher. Mary Ann Loder swore that the claimant was her old sweetheart. From Australia the most incontrovertible evidence arrived, showing conclusively that Castro and Orton were one and the same person. And, despite the efforts of Bogle, Baigent, Miss Braine, and two score ex-Carabineers, the verdict was plain—



TRIAL OF THE CLAIMANT.





Guilty on two counts. Cockburn passed the severe sentence of seven years' penal servitude on each count—fourteen years in all.

One of the most remarkable features of the trial was the performance of Dr. Kenealy. This gentleman was a well-known advocate who had been in the Palmer case as a junior; and was not, therefore, without experience of a heavy case. But the Tichborne case seemed to turn his head. He assumed the attitude not of counsel but of a partisan. He attacked all and sundry in his two speeches to the jury—of which the first occupied twenty-one days and the second almost an equal period. Never, probably, has any member of the English Bar made so many reckless statements. His distortions of the evidence were so ludicrous that the judges and the jury were continually interrupting him to set him right. He charged the witnesses on the other side with perjury, one and all. "Conspiracy," "oppression," "perjury," were the words for ever on his lips.

When he came to the conclusion of his last speech, however, he went a little too far. Glancing at Cockburn, he said, "Many things have passed in the course of this trial which I would give a portion of my heart's blood had not passed. Many things have occurred in the course of this investigation which in my judgment will for ever blur and sully the names of certain individuals—individuals with whose name and glory many of us were concerned; individuals whose name and glory was part——" *Cockburn*: "Will you speak a little louder?" *Kenealy*: "I will speak as loud as I can; I am suffering from indisposition."

To mend matters a little, the reckless Irishman told the jury that if they gave a certain verdict they would

receive the ovations of their countrymen. "Is there a man in the country who believes this man to be Arthur Orton? I believe the universal conviction of the people of England to be the other way" *Cockburn*: "Really you ought not to say that; we have nothing to do with people out of doors." *Kenealy*: "I hope we have."

The Chief Justice said nothing at the time, to everybody's great surprise; but in his summing-up he administered to Kenealy a castigation such as no member of the English Bar has ever received. Alluding to the passage of the speech above quoted, Cockburn said: "The learned counsel spoke just loud enough for the reporter to catch his words, but not for us; yet one or two words caught me, as I listened, which made me think that some contumely and insult was intended to be conveyed; and I called upon the learned counsel to speak out, as a man should speak when he attacks others; and his answer was that indisposition, brought on by overwork and exertion, prevented him from speaking in the loud tone which he can otherwise so well command; and yet two minutes afterwards, when he had changed his subject, he was speaking loud enough to be heard at the other end of Westminster Hall. That is the way—combining cowardice with insult—in which the learned counsel thought proper to insult this court. I rejoice to see the Bar of England are here present in numbers; let them hear the way in which one of their body addresses the Court of Queen's Bench—I venture to say this august Court of Queen's Bench. . . . The Court is not to be bearded and insulted in this flagrant manner. The Bar shall hear the language which, outraging all decency, one of their own body addressed, not to the Court, but to the

reporters, in order that it might get into the newspapers without bringing on him the visitation with which otherwise most assuredly he would have been visited at the moment."

Then, reading the passage of Kenealy's speech, Cockburn asked, in a tone of terrific severity: "Is that the way counsel is to speak of the judges of the tribunal before whom he is pleading? I am quite sure there can come but one response from the body that I see before me."

Here—a most extraordinary scene—the whole Bar rose, and even the iron face of Cockburn was lit up with a smile at the unprecedented compliment. It may be added that the Benchers of Gray's Inn disbarred Kenealy for his disgraceful conduct of the claimant's case.

The other startling incident was the appearance of one Jean Luie, a foreigner, who said he was a sailor, and that he had been steward of the *Osprey*, and had picked up the claimant—who then gave the name of Rogers—in a boat marked with the *Bella's* name. He had, he said, heard of the Tichborne case in Australia, had made his way to England, was immediately recognised by the claimant, whom he, in turn, identified as "Mr. Rogers." This evidence was the best yet put forward for the claimant. Unfortunately, however, for Mons. Jean Luie, his portrait was published in the papers, somebody came to the court, looked at him, and said immediately, "Why, this is Sorensen." Sorensen turned out to be a swindler who had been in gaol quite recently. Before that he had been three or four times in prison (including a term of seven years) for swindling, and for bigamy. He had been in Hull in 1853-4 when he swore he picked up Mr. Rogers. So Jean Luie

vanished to prison again—this time for perjury—and the *Osprey* receded once more into the realms of myth from which it appeared to have emerged.

Even after the emphatic finding of the second jury, the "Sir Roger" cult continued for a long time. Hawkins, whose keen cross-examination and wonderful speeches for the prosecution had served to make assurance doubly sure, was hooted through the streets more than once with cries of "Wagga-Wagga." Scores of people lived and died in the belief that the great, gross man who had been sent to gaol was the real Sir Roger. In the 1874 election, many votes were cast upon the Tichborne question. Dr. Kenealy, in the *Englishman*, and an association called the Magna Charta Society, raised a tremendous agitation for a re-trial. Kenealy was actually elected M.P. for Stoke-on-Trent by a majority of nearly 2,000; and brought forward a motion in the House of Commons. One honourable member voted for it. Kenealy died in 1880; and when the claimant was liberated in 1884 attempts made by him to revive interest in his claims were a failure.

At last, finding there was no more money to be made out of asserting himself to be Sir Roger Tichborne, he was tempted to earn a little by confessing who he was; and in the columns of that enterprising journal, the *People*, he owned that he really was Arthur Orton, and that he had entered into the fraud at first as a lark. One thing led to another, and the recognition by the crazy Dowager made him resolve to go on, which was not very wonderful. The wonder was that anybody who was not crazy should believe him.

## XIX.

### THE "JOLLY ROGER."

#### *A Typical Case of the Eighteenth Century.*

THANKS to the British Navy, mariners may now sail the sea without any danger save from the rage of the elements. The ocean is as safe a highway as Cheapside. But it was not always so. In the time of Charles I., even the Narrow Seas that wash the English shore were infested with pirates; and, long after these waters were cleared, there were to be found gangs of desperate men who preyed on the commerce of all nations on the trade routes to the East and West Indies, and to Africa.

In the month of May, in the year 1694, the good ship *Charles the Second* was riding about four miles from Corunna, on the north-west coast of Spain, known by sailors as the Groyne. She carried, as all merchant ships did in those days, a heavy armament—forty-six guns, big and little; with muskets and other small arms. She was commanded by Captain Gibson, who was lying, at the date I speak of, ill of a fever. Discipline appears to have become relaxed; and while things were in this state a member of the crew named Every formed the project of seizing the vessel and hoisting the black flag.

What followed may be told in the words of a witness, David Creagh, who found himself an unwilling party to the piracy.

"Upon the 7th of May, 1694, I came to the Groyne, in company with the boatswain and several others, on board of the *Charles the Second*. When I was going in to the captain of the *Charles*, Captain Gibson, I found Mr. Every and the carpenter and some others drinking a bowl of punch. And after I was come from the captain, I came and sat down with them, and Mr. May drank a health to the captain, and prosperity to their voyage. We, not knowing their design then, thought it was to our lawful captain, and prosperity to the voyage he was designed for. And afterwards the company broke up and retired, and went to their cabins. And when we were in our cabins, we heard a great noise above deck; and Captain Humphreys, that commanded the galley [the *Dove*], called to us to tell us his men were run away with the boat, and were gone to Captain Gibson. To which Every answered, that he knew that well enough. So the men came aboard. And as I was coming out of my cabin to see what the matter was, I was met by Every, the carpenter, and two Dutchmen; and they obliged me to retire again to my cabin. Captain Humphreys fired two guns at us. But we presently got out of reach of the guns, and proceeded on the design. And I came out of my cabin, and went on the quarter-deck, when I met Every and the carpenter together. Every was conning the ship. So Every took me by the hand, and asked me if I would go with him. And I answered, that I did not know his design. He said there were but few that knew it. Says I, 'Tell me who do know it, that if you will not tell me yourself, I may ask them that can tell me.' But he said, 'You shall all know by to-morrow morning, eight o'clock.' I told him that would be too late to repent. The carpenter stood by him and said, 'Do you not see this

cock?' 'Yes,' says I, 'I do.' Says he, 'This man and old May and Knight I can trust with anything; they are true cocks of the game, and old sportsmen.'"

Creagh then insisted upon being told the design, whereupon the carpenter threatened him, "If you do not go down, I will knock you on the head." Creagh thought he would be well advised to go below, and on his way down, he met May, one of the true cocks of the game, who asked him what he was doing there. Creagh made no answer. "D—— you," said May, "you deserve to be shot through the head," and he held a pistol to the head of Creagh.

The next thing that happened as far as the witness was aware, was that Every sent word round that all who wished to go ashore might go at once. The captain was carried out of his cabin, and to him the leader of the pirates said, "I am a man of fortune, and must seek my fortune." The sick man replied that he was sorry that such a thing should happen; whereupon Every offered to allow him to remain in command if he would go with the ship. Gibson, as might have been expected, indignantly refused. The pinnace was lowered, and fifteen men followed their captain into it. The ship's doctor would have gone, but Every ordered him to be seized and detained.

It appeared that the *Charles the Second* had been out of England eight months when she came to the Groyne. The men had been told that when they came thither they would be paid their wages; but the captain was unable to raise the money at that port. Not unnaturally, the crew became discontented; and Every, who was a man of superior education, proposed to some of the malcontents that they should steal the ship and hoist the black flag. When he went ashore, the tempter



opened his proposition to some sailors from two other ships, the *Dove* and the *James*; and he secured the adhesion of a considerable number of them.

The plan was that on the night of the 7th of May, which was a Monday, the accomplices of the other two ships should seize boats and row themselves aboard the *Charles*. Gibson, as we know, was lying in his cabin. The other officers were to be seized suddenly, held in durance until the ship had been taken out of the harbour, and then sent ashore, as we have seen was done. The scheme succeeded to admiration. No fewer than twenty-six men deserted from the *James*, and about a dozen from the *Dove*. The officer in charge of the watch on deck suddenly found himself seized by the throat, what time the muzzle of a pistol pressed against his forehead. Then he was locked in his cabin, while the mutineers cut the cables and stood out to sea. They ran right under the nose of the castle, which might easily have sunk them with its guns; but no attempt was made to stop them, except by Captain Humphreys of the *Dove*, who hastily fired two guns at them.

After putting the captain and his loyal followers into the pinnace, which was done about six miles out at sea, the pirates made sail for the Isle of May, where they calculated on being able to provision the ship. Nor were they disappointed. They met three small trading vessels, and overawed them into providing a large quantity of provisions, besides some ropes, spare canvas, and other necessities. They also enlisted nine new men out of these vessels.

So far, the pirates had not made their fortune; nor, on the other hand, had they committed anything more than robbery. But a vessel could not long sail under the black flag on these terms. Every had promised to

make all the men rich. Now one of the ways of making money was the negro trade; and accordingly the *Charles* steered for the Guinea coast. A party of ruffians as inhuman as any that ever landed even on that guilty shore made an expedition amongst the wretched blacks and captured a good many. The next move was to the Island of Princes, in the Gulf of Guinea.

At this well-known place of call, Every saw, as he had expected, something worth capturing; for there lay two Danish merchant ships, laden with valuable cargo. Bearing down upon them with every gun shotted, the pirate captain called on them to surrender; but the Danes, with more courage than judgment, elected to fight. Although the merchantmen were two to one, the *Charles the Second* had them at a disadvantage; for she was under sail, and they were at anchor. A few broadsides, feebly replied to, and then the pirate crew manned boats and pulled off to their prey. The Danes fought well; but they were outnumbered, and very soon Every stood triumphant on the blood-stained deck of one, and May had crushed all resistance in the other.

To the survivors of the two crews, Every offered terms better than some pirates would have offered. They might join him or be put ashore—a somewhat better alternative than the usual one of joining or walking the plank. Nine of the Danes elected to turn pirate, the others were allowed to take boats and put themselves on shore. The authorities at the Island of Princes were propitiated by a gift of seven negroes, in return for which the pirates were allowed to purchase food and water, and dispose of some of their booty.

Having exhausted the hospitality of the island, the rovers sailed with their prizes to the mainland. Here

the ship was cleaned, and one of the prizes, having been first emptied of everything that was useful, was burnt. The other was manned by a prize crew. But when they had sailed a little way to Cape Lopez, they who manned the prize complained that their work was too hard, and Every was compelled to sink her by firing a shot below the water-line. From Cape Lopez the pirates sailed to Annobon Island; and thence set off for the Indies. Round the Cape they sailed, with no better luck than the capture of a rice-junk, which was chased, caught, and sunk with all hands on board after the rise had been taken out of her. After this they cruised for a short time about the line, hoping to pick up a fat merchantman or two; but all they met with was three English ships, sailing in company, and too strong to be attacked. They ran short of water and rice, and were obliged to make for an African port. Here they compelled the natives to trade with them; and had also the luck to meet a small French vessel, which they took, plundered, and sank.

Their next exploit was at a port on the Red Sea. Here the pirates offered to trade; but the inhabitants refused; and the desperadoes, enraged, stormed the town, and burnt it to the ground. The pirates were now on the track of rich plunder; for at that time regular fleets used to trade between Mocha and the Indian coast. The Mocha fleet, as it was called, was generally supposed to contain incalculable wealth. And the crew of the *Charles the Second* speedily found they were not the only outlaws who appreciated the strategic advantages of a position at the mouth of the Red Sea. For soon they espied another vessel, and then another, both of which, on examination, turned out to be pirates also, commanded by men named Farrel and Wake.

The three pirate captains held a council of war, and decided to join forces and attack the Mocha fleet. So for a day or two the pirates rode at anchor at the mouth of the Red Sea, waiting for their prey.

On the third morning, however, a vessel ran right into the jaws of the pirates, and was promptly captured. The members of her crew were questioned whether they had seen anything of the Mocha fleet. The ruffians were by no means pleased when they heard that their destined booty had slipped past during the preceding night. A hasty consultation was held. Should they go in chase, or remain where they were and fall on stray vessels? In the end they decided to give chase.

All the pirate ships were fast sailers; and the men who manned them were seamen of the utmost skill. Indeed, a speedy ship and skilful seamanship were as necessary for the piratical profession as were an entire absence of conscientious scruples and a plenitude of physical courage. Towards the end of the third day a man at the masthead of the *Charles the Second* cried the joyful tidings, "A sail! a sail!" and presently the whole Mocha fleet appeared hull down on the horizon; and the pursuers exerted every art of seamanship to come up with them before dark.

The merchantmen, on their part, perceived that they were being chased; and made all sail to escape. Could they but avoid capture until night fell, they stood a good chance of getting clear away.

It was close on nightfall when the *Charles the Second*, the foremost of the pirates, came within shot of the hindmost of the merchant fleet, a vessel of 300 to 400 tons. The gunnery of the pirate was by no means despicable; for the third shot from one of her bow-chasers carried away some of the spars of the Surat

vessel, and sensibly diminished her rate of sailing. Mile by mile the pirate ship overhauled her; ranged alongside; poured in a broadside from guns double-shotted; flung her grappling irons on the doomed vessel's deck, and launched over her bulwarks half a hundred hard-bitten fighting men. The crew of the merchantman did not "take it lying down," as the classic phrase is; but their puny resistance did not long stay the career of the ruffians who, thirsting for blood and plunder, charged over their decks. After a short resistance, the ship was captured, and was found to contain a handsome booty, including a good deal of gold and silver. As it was thought the ship itself might be valuable, a prize crew was put on board her; and the *Charles the Second*, with her prize, stood in for the island of St. Johns.

While at anchor here, another stroke of luck befell. Another sail, looking suspiciously like a Surat vessel, was espied; and the pirates up anchor and made after her. She, too, fell a prey to the spoiler, after a couple of broadsides and a few volleys of small shot had killed about a third of her crew; and she also yielded considerable treasure, even more than the first vessel of the Mocha fleet. No less than 100,000 pieces-of-eight and 100,000 rupees were taken out of her. The vessel itself (its name was the *Gunsway*) was not wanted by the pirates, so they let her go, with the remainder of her crew, to tell the owners at Surat the melancholy story.

The pirates had now had enough of it. The life had begun to pall on them a little. They longed for their native homes and a quiet life. Besides, they had made their fortunes, as fortunes were accounted by men of that class. The gold and silver taken out of the two Mocha vessels amounted to such a sum that

the crew, who numbered 160 or thereabouts, received from £1,000 down to £100 each. The average share was about £600. Besides, there was much rich merchandise to be disposed of. A few there were who wished to rove the seas still; but the majority decided to make for some British port, and try to purchase safety by offering to surrender on promise of a pardon.

So they sailed to an Indian port and refitted first; and then on to another port, where some twenty-five Frenchmen, fourteen Danes, and a few English preferred to go ashore and remain. They had no fancy for risking their necks at the hands of the British Government. It must be said that they showed considerably more penetration than the others.

From that time forth there were no more piracies by the *Charles the Second*. She sailed first to Ascension Island, and thence across to the West Indies, to Providence Island. Here Every sent in a letter to the Governor, asking if he would let them all come in. Each man offered to contribute towards a present (the euphemistic term for a bribe) to the Governor, at the rate of two pieces of gold, and twenty pieces-of-eight; Every, who had had a double share of the plunder, was to contribute four pieces of gold, and forty pieces-of-eight.

The Governor of Providence returned for answer that they should be welcome; and they accordingly went ashore. A warm welcome did, indeed, await them. The Governor laid violent hands on them, and sent them over to London to be tried for their crimes. Nine of them were tried at the Court of Admiralty, and were charged, in the first instance, with the piracy of, assaulting and robbing the *Gunsway*, the most notable of their crimes. To the surprise of the bench, the bar, and the

public, and to the hot indignation of the mercantile community, a City of London jury acquitted the prisoners on this charge. Why, I cannot conceive, except it be that the *Gunsway* was a ship belonging to Indians, with whom the jury had no sympathy.

Chief Justice Holt, who presided, was exceeding wroth; and ordered the men to be brought up again on another indictment, which charged them with running away with the *Charles the Second* from the Groyne, and also with piracy upon the other ship of the Mocha fleet. Holt delivered to the Grand Jury a charge calculated to make the ears of the first jury burn. "No man," said he, "can believe just as he lists; and therefore a determination or judgment at will and pleasure will never be thought worthy the name of a verdict; for whatever may be pretended, the world will not be persuaded that a jury hath pursued the dictates of conscience, unless some reasonable grounds for its proceedings shall appear. . . . Otherwise, since foreigners look upon the decrees of our courts of justice as the sense and judgment of the whole nation, our enemies will be glad to find an occasion to say that miscreants out of the protection of all laws and civil government are abetted by those who contend for the sovereignty of the seas. The barbarous nations will reproach us as being a harbour, receptacle, and nest of pirates; and our friends will wonder to hear that the enemies of merchants and of mankind should find a sanctuary in this ancient place of trade."

The second jury made no such mistake as the first. The facts were too clear to admit of contradiction. Gravet, the second mate of the *Charles the Second*, proved that all the prisoners had a hand in carrying off the vessel. Creagh, one of those who refused to

join the piracy, proved the guilt of May and one or two others; and two of the pirates themselves, who had turned informers, testified as to the course of piracy pursued. Indeed, the prisoners did not attempt to deny the piracy. They only said they were overawed by Every. The pirate captain was not there to contradict them. He had made his escape betimes at Providence.

This defence availed the prisoners nothing. One of the judges very quaintly observed, "You seem to have coerced each other." The jury found them all guilty. The last dread sentence of the law was passed on them; and on the 25th of November, 1696, the whole nine were hanged in chains at Execution Dock, where for many weeks their bodies swung—a sign to the mariners of all nations that the British nation was not, after all, a "harbour, receptacle, and nest of pirates."

Chief Justice Holt's action in these trials had a great effect in helping to stamp out piracy; for it convinced the English sailor that he would get short shrift if he preyed upon commerce, no matter whether that commerce was English, foreign, or even barbarian. And ere long the British people and Government realised that the Sovereignty of the Seas involved the co-relative obligation of keeping the seas clear of the robbers who had formerly infested them.



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